

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*
JAMES AND KATHRYN SLOUGH

Docket No. 2008-271
Complaint No. 305929

Complainant,

v

MICHAEL WAYNE HANSELMAN
License No. 21-01-152171

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 James Sisk, Administrative Law Judge, dated May 28, 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 60 days from the mailing of this Final Order. Complaint No. 305929 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 in the amount of \$6,803.00, to James and Kathryn Slough by certified check made payable to James and Kathryn Slough and mailed to 01340 Slough Rd., Ellsworth, MI 49729, 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. 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
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.	2008-271
Bureau of Commercial Services, Petitioner	Agency No.	305929
V Michael Wayne Hanselman, Respondent	Agency:	Bureau of Commercial Services
_____ /	Case Type:	Sanction

**Issued and entered
this 28th day of May, 2008
by James Sisk
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Request for Hearing on February 25, 2008. pursuant to the receipt of the Request for Hearing, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing dated February 25, 2008. The Notice of Hearing scheduled a contested case hearing for March 25, 2008.

On March 4, 2008, the Bureau of Commercial Services (BCS), Petitioner, filed a Request for Adjournment.

On March 10, 2008, the Administrative Law Judge (ALJ) issued an Order Granting Adjournment. The Order notified the parties that the contested hearing had been rescheduled for May 20, 2008.

The hearing commenced on May 20, 2008 as scheduled. John P. Mack, Assistant Attorney General, appeared on behalf of Petitioner, BCS.

James Slough, Complainant, and Kenneth Doty, Building Inspector, also attended the hearing.

SOAHR issued the Notice pursuant to allegations set forth in a Formal Complaint issued on November 29, 2007. The Complaint alleged that Michael Wayne Hanselman, Respondent, violated the Occupational Code of 1980, 1980 PA 299, as amended, (Code), being MCL 339.101, *et. seq.* and certain Administrative Rules promulgated pursuant thereto.

At the outset of the hearing, John P Mack requested that Petitioner be allowed to proceed in Respondent's absence pursuant to Section 72 of the Administrative Procedure Act of 1969, 1969 PA 306, as amended, (APA), being MCL 24.272 (a), and a default be granted on behalf of Petitioner pursuant to Section 78 of the APA, being MCL 24.278.

Section 72 of the APA provides in pertinent part:

- (1) 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 [MCL 24.272(1)].

Further, 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 stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties [MCL 24.278(2)].

The ALJ granted Petitioner's Motion for Default. As a result of the default, the allegations contained in the Formal Complaint were deemed proven.

During the course of the hearing, Slough, the Complainant, and Doty, the Building Inspector, both testified in support of the allegations in the Formal Complaint. Additionally, Petitioner introduced three exhibits into evidence:

- Exhibit #1 Statement of Complaint filed by the Sloughs dated November 14, 2006
- Exhibit #2 Doty's Building Inspection Report dated January 23, 2007
- Exhibit #3 Inspector's Photographs of some of the Code Violations uncovered

ISSUES AND APPLICABLE LAW

This matter raises the issue of whether Respondent violated the Code and/or the Rules. This matter raises the specific issue of whether Respondent violated Section 604 (c), being MCL 339.604 (c), and 2411 (2) (a) and (e) of the Code, being MCL 339.2411 20 (a) and (e), and or Rules 51 (2), (4), and (5), R106.1.3, R110, R311.5.3.1, R311.5.3.2, R311.5.6, R311.5.6.2, and R311.5.6.3 of the 2003 Michigan Residential Code.

Section 604(c) provides:

Sec. 604 A person who violates 1 or more of the 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 or conduct of an occupation

Sections 2411 (2) (a) and (e) provide:

(2) A licensee or applicant who commits 1 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.

(e) A willful violation of the building laws of the state or of a political subdivision of the state.

Rule 51 (2) and (4), R338.1551 (2) and (4), provide:

(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. He shall reply to the department within 15 days from the 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 portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the areas of disagreement.

(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.

R106.3 of the 2003 Michigan Residential Code provides:

For buildings and structures in flood hazard areas as established by Table R301.2(1), construction documents shall include:

1. Delineation of flood hazard areas, floodway boundaries, and flood zones, and the design flood elevation, as appropriate;
2. The elevation of the proposed lowest floor, including basement; in areas of shallow flooding (AO zones), the height of the proposed lowest floor, including basement, above the highest adjacent grade; and
3. The elevation of the bottom of the lowest horizontal structural member in coastal high hazard areas (V Zone); and
4. If design flood elevations are not included on the community's Flood Insurance Rate Map (FIRM), the building official and the applicant shall obtain and reasonably utilize any design flood elevation and floodway data available from other sources.

R110.1 provides:

A building or structure shall not be used or occupied, and a change in the existing occupancy classification of a building or structure or portion thereof shall not be made until a certificate of occupancy has been issued in accordance with section 13 of 1972 PA 230, MCL 125.1513.

R311.5.3.1, R311.5.3.2 and R311.5.3 provide:

The maximum riser height shall be 8 ¼ inches (210 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

The minimum tread depth shall be 9 inches (229 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12-inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than ¾ inch (19 mm) but not more than 1 ¼ inch (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed the smallest nosing projection by more than ¾ inch (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed ½ inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 (0.51 rad) degrees from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere.

Exceptions:

1. A nosing is not required where the tread depth is a minimum of 11 inches (279 mm).
2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

R311.5.6.2 and R311.5.6.3 provide:

Handrails shall be provided on at least one side of each continuous run of treads or flight with four or more risers.

Handrails for stairways shall be continuous for the full length of the flight, from a point directly above the top riser of the flight to a point directly above lowest riser of the flight. Handrail ends shall be returned or shall terminate in newel posts or safety terminals.

Handrails adjacent to a wall shall have a space of not less than 1 ½ inch (38 mm) between the wall and the handrails.

All required handrails shall be one of the following types or provide equivalent graspability.

1. Type I. Handrails with a circular cross section shall have an outside diameter of at least 1 ¼ inches (32 mm) and not greater than 2 inches (51 mm). If the handrail is not circular it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than 6 ¼ inches (160 mm) with a maximum cross section of dimension of 2 ¼ inches (57 mm).

2. Type II. Handrails with a perimeter greater than 6 ¼ inches (160 mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of ¾ inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8 mm) within 7/8 inch (22 mm) below the widest portion of the profile. The minimum width of the handrail above the recess shall be 1 ¼ inches (32 mm) to a maximum of 2 ¾ inches (70 mm). Edges shall have a minimum radius of 0.01 inches (0.25 mm).

FINDINGS OF FACT

1. Mack made a statement upon the record that Respondent sent a written communication to Petitioner on December 10, 2007. The communication advised that Respondent would be moving out of state and filing a bankruptcy. Mack stated that Petitioner has not been served with official notice of any bankruptcy proceeding initiated by Respondent as of the date of this hearing.
2. At all times relevant to this matter, Respondent possessed a valid residential builder's license.
3. On June 1, 2004, Complainants' residence burnt to the ground.
4. In July 2004, Complainants made a verbal agreement with Respondent to build a new residence to replace the one that burnt down.
5. Pursuant to that agreement, Respondent provided an architectural blueprint of the new residence and a full list of the items needed to construct it, as well as the costs of such construction.
6. Farm Bureau, Complainants insurer, disbursed total funds in the amount of \$430,000.00 to Respondent as payment for the construction work.
7. Farm Bureau issued the final payment to Respondent in April 2005.
8. Respondent failed to use the proper styrofoam molds when constructing the basement walls, which resulted in the basement walls being too high.
9. The error made in constructing the basement walls resulted in the basement stair risers being incorrect.
10. Respondent failed to install handrails on the back stairs.
11. Respondent constructed the stair winders incorrectly, which created a trip hazard.
12. Respondent installed incorrect diameter stairway handles in parts of the building.
13. In a storage room in the residence, Respondent left the installed insulation exposed and did not cover it with drywall.
14. Doty, a housing inspector for Charlevoix County, inspected the residence

and found violations of R106.1.3, R311.5.3.1, R311.5.3.2, R311.5.6, R311.5.6.2, and R311.5.6.3.

15. Because of the existing Code violations, Doty would not issue a permanent certificate of occupancy, required by R110, to Complainants.
16. Doty issued a temporary occupancy permit to Complainants because the building constitutes their residence.
17. Complainants sent several letters to Respondent requesting that he correct the code violations.
18. Respondent never corrected the code violations.
19. Complainants contacted Pety Construction about making the necessary repairs to bring the residence into compliance with the Code.
20. Pety Construction estimated the total cost of the repairs needed at \$6,800.00.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. *8 Callaghan's Pleasing and Practice (2nd.)*, Section 60.48, page 230.

Petitioner has the burden of proof to establish by a preponderance of the evidence that grounds exist for the imposition of sanctions pursuant to 1990 AACS, R339.1763.

Section 72 of the APA does not require that a full evidentiary hearing be held when all of the alleged facts are accepted as true. *Smith v Lansing School Dist.*, 428 Mich. 248 (1987).

Based upon the entire record, including the testimony of Slough and Doty, as well as Exhibits #1-3, and the default, which the ALJ has granted, the ALJ finds that Petitioner has established the following violations of the Code and Rules by a preponderance of the evidence:

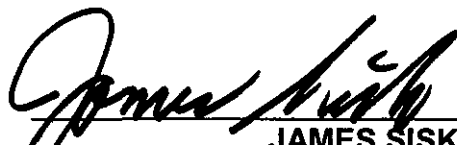
1. By failing to complete construction and make the necessary adjustments to bring the residence into compliance with the Code, Respondent has violated Sections 604 (c), MCL 339.604 (c), and 2411 (2) (a) and (e), MCL 339.2411 (2) (a) and (e), of the Code.
2. By installing the basement stair risers incorrectly, Respondent has violated R311.5.3.1.
3. By not installing handrails on the back stairway, Respondent violated R311.5.6
4. By installing an incorrect winder on the back stairway, Respondent violated R311.5.3.2.
5. By not returning the ends of the handrails, Respondent violated R311.5.6.2.
6. By leaving the insulation in one room exposed, Respondent violated R106.1.3.
7. By installing handrails of incorrect diameter, Respondent violated R311.5.6.3.
8. By leaving the residence in a condition that prevented the issuance of a permanent certificate of occupancy, Respondent violated R110.
9. By not responding to the Complaint, Respondent violated Rule 51 (2), R338.1551 (2).
10. By not correcting the Code violations within a reasonable time after notice thereof, Respondent violated Rule 51 (4), R338.1551 (4) and presumptively engaged in dishonesty and unfair dealing.

RECOMMENDATIONS

Based upon the preceding Findings of Fact and Conclusions of Law, the ALJ makes the following recommendations to the Board:

1. Payment of restitution to Complainants, James and Kathryn Slough, in the amount of \$6,803.00.
2. Payment of a civil fine in the amount of \$3,000.00.

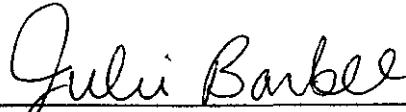
3. In the event that the fine and restitution have not been paid within 60 days following the issuance of the Board's final order, all licenses or registrations held by Respondent that fall within the jurisdiction of the Code should be suspended, and no new or renewal licenses or registrations should be issued until the civil fine and restitution have been paid in full.



JAMES SISK
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 28th day of May, 2008.



Julie Barbee
State Office of Administrative Hearings and Rules

Michael Wayne Hanselman
06767 Pincherry
Charlevoix, MI 49720

John P Mack
State of Michigan
Department of Attorney General
6 Pennsylvania Plaza
Petoskey, MI 49770

Stephen J Gobbo
Bureau of Commercial Services
Compliance/Legal Unit
Enforcement Division
P.O. Box 30018
Lansing, MI 48909