

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*
BRAD O'GROSKY AND LAZARUS PROPERTIES LLC

Docket No. 2008-47
Complaint No. 303174

Complainant,

v

JEREMIAH ANTON KROMREI
License No. 21-01-177907

Respondent.

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on July 15, 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 Gregory Holiday, Administrative Law Judge, dated June 9, 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. 303174 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 Lazarus Properties LLC by paying in full the Judgment dated July 28, 2006 entered in Wayne County Circuit Court, Case No. 06-613673-CH in the amount of \$51,400.00, plus statutory interest by certified check made payable Lazarus

Properties LLC and mailed to 2215 Regent St., Madison, WI 53726 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 are IMMEDIATELY REVOKED. 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's failure to comply with each and every condition of this Final Order within 60 days shall result in CONTINUED REVOCATION of any and all Article 24 licenses held by Respondent.

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 17th day of September, 2008.

BY: 
Mark T. Glynn, Chairperson

Date mailed: September 17, 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.	2008-47
Bureau of Commercial Services, Petitioner	Agency No.	303174
v	Agency:	Bureau of Commercial Services
Jeremiah Anton Kromrei, Respondent	Case Type:	Sanction

**Issued and entered
this 9th day of June, 2008
by Gregory Holiday
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the issuance 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 or Department) dated November 28, 2007. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA), Jeremiah Anton Kromrei (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 scheduled the contested case to commence on Monday, March 24, 2008 at 9:00 a.m., at the State Office of Administrative Hearings & Rules of the Department of Labor & Economic Growth, Cadillac Place, 2nd Floor Annex, Room 2-700, 3026 West Grand

Boulevard, Detroit, Michigan. Further, the notice 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 commenced at about 9:48 a.m. Gregory Holiday presided as Administrative Law Judge. Tiffany Daugherty, Esq., appeared on behalf of Petitioner. Neither Respondent nor anyone on Respondent's behalf appeared for the hearing.

At the outset of the contested case hearing, it was requested that a default be entered on behalf of Petitioner 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 Formal Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The general issue presented is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.*, with respect to the practice of a residential builder or maintenance and alteration contractor. The specific issues are whether or not Respondent violated Sections 604(c) and 2411(2)(a), (e) and (l) of the Code, and Rules 338.1521(3) and R338.1551(2), which provide in pertinent part:

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 of conduct of an occupation.

Sec. 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.

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

(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.

Rule 21...(3) An applicant operating under an assumed name or d.b.a shall submit a certified copy of the assumed name certificate. An applicant operating as a co-partnership shall submit a certified copy of the certificate of co-partnership. An applicant operating as a corporation shall submit a copy of the articles of incorporation and the latest corporation annual report, if any, and be in good standing as a corporation.

Rule 338.1551...(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 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 thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

EXHIBITS

Petitioner offered the following exhibits for consideration at the hearing, all of which were admitted into evidence:

<u>Exhibit</u>	<u>Description</u>
1	Lazarus Properties LLC Statement of Complaint against Watermen Const. – Jeremiah Kromrei
2	7/28/2005 Estimate #24 to Bradley O’Grosky by Watermen Construction for \$3,800
3	8/24/2005 Estimate #29 to Bradley O’Grosky by Watermen Construction for 2,380
4	9/9/2005 Estimate #34 to Bradley O’Grosky by Watermen Construction for \$1,350
5	9/9/2005 Estimate #33 to Bradley O’Grosky by Watermen Construction for \$3,500
6	9/9/2005 Estimate #32 to Bradley O’Grosky by Watermen Construction for \$2,280
7	9/9/2005 Estimate #31 to Bradley O’Grosky by Watermen Construction for \$3,245
8	March 22, 2004 Certificate Conducting Business under An Assumed Name for Watermen Construction
9	Certificate of Licensure History and Assumed Name History for Jeremiah Anton Kromrei
10	July 28, 2006 Default Judgment of Lazarus Properties LLC against Jeremiah Anton Kromrei dba Watermen Construction for \$51,400

FINDINGS OF FACT

1. Respondent has, at all relevant times, been licensed as a residential builder under the Code, except as to those events that occurred after May 31, 2006, at which time the license lapsed.

2. A Statement of Complaint (Petitioner Exhibit 1) was filed against Respondent with the Department on about May 4, 2006.

3. Jeremiah Anton Kromrei d/b/a Watermen Construction entered into contracts to perform services regulated by the Code with Lazarus Properties LLC on about July 28, August 24, and September 9, 2005 (See Petitioner Exhibits 2-7).

4. Respondent failed to file an assumed name certificate (See Petitioner Exhibit 8) with the Department before he commenced doing business as Waterman Construction (See Exhibit 9).

5. Respondent has, without legal excuse, failed to perform the terms of the contracts.

6. Respondent, on July 28, 2006, had a Judgment entered against him in the Wayne County Circuit Court, in the amount of \$51,400.00 plus interest (See Petitioner Exhibit 10).

7. Respondent has failed to satisfy the Judgment.

8. Respondent failed to respond to the Statement of Complaint in a timely manner.

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

10. Respondent was properly served with notice of this proceeding but did not appear 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 AACS, 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 NW2d 825 (1987).

Based upon the facts described herein, Petitioner has established that Respondent violated Sections 604(c) and 2411(2)(a) and (l) of the Code, and Builder Rules 338.1521(3) and 338.1551(2), as described in the Formal Complaint.

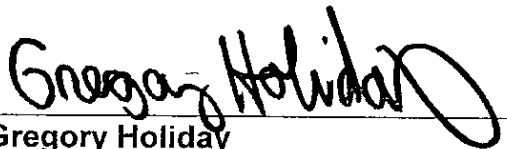
DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent has violated Sections 604(c) and 2411(2)(a) and (l) of the Code, and Builder Rules 338.1521(3) and 338.1551(2), subjecting Respondent to disciplinary sanctions under Section 602 of the Code. Petitioner made no recommendation for sanctions, leaving it to the Board's discretion.

It is recommended that the Board include the following as sanctions in this matter:

1. Payment of a civil fine in the amount of \$3,000.00
2. Payment of restitution to Lazarus Properties LLC in the form of a satisfaction of the July 28, 2006 Judgment.

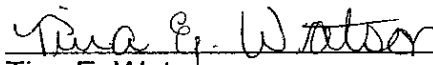
3. All Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine and restitution have been paid.



Gregory Holiday
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 9th day of June, 2008.



Tina E. Watson
State Office of Administrative Hearings and Rules

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