

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

Docket No. 2007-1653
Complaint No. 305533

Complainant,

v

J S GIBSON CONSTRUCTION CO.
JAMES S. GIBSON, QUALIFYING OFFICER
License No. 21-02-125613

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 Michelle Howie, Administrative Law Judge, dated May 5, 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, 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. 305533 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 the Homeowner Construction Lien Recovery Fund in the amount of \$5,200.00 and \$1,050.00 in litigation costs, fees and interest at the statutory rate from November 3, 2006, payable to the Homeowner Construction Lien Recovery Fund and mailed to Department of Labor & Economic

Growth, Bureau of Commercial Services, Administrative Services Division, 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. 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 and Respondent's Qualifying Officer. 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.

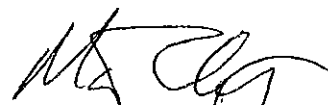
4. Respondent shall submit in writing to the Michigan Department of Department of Labor & Economic Growth, Bureau of Commercial Services, Administrative Services Division, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance with each and every requirement of this Final Order, in a form acceptable 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 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.	2007-1653
Bureau of Commercial Services, Petitioner	Agency No.	305533
v	Agency:	Bureau of Commercial Services
JS Gibson Construction Co. James S. Gibson, Qualifying Officer, Respondent	Case Type:	Sanction

Issued and entered
this 5th day of May, 2008
by Michelle Howie
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint (Complaint) dated September 4, 2007 against JS Gibson Construction (Respondent), 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 on February 28, 2008 the same proceeded as scheduled. Administrative Law Judge Michelle Howie presided. Seren Katranji-Zeni, appeared on behalf of Petitioner. David Berndt, Attorney at Law, appeared on behalf of Respondent.

Respondent stipulated to the factual allegations contained in Petitioner's Formal Complaint, therefore, the allegations were deemed proven.

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Sections 2411(2)(c) & (l) and 2411(3) of the Occupational Code, 1980 PA 299; as amended; MCL 339.2411(2)(c) 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, has, at times relevant to this Complaint, been licensed as a residential builders under Occupational Code, 1980 PA 299 as amended , Article 24; MCL 339.2401-2412, or was seeking renewal of such license. Except after May 31, 2006, at which time the license lapsed.
2. On November 3, 2006 as a result of Respondents' failure to pay one or more lien claimants a judgment was entered against the Homeowner Construction Lien Recovery Fund (HCLRF) in favor of Stock Building

Supply LLC in the amount of \$5,200.00 in the County of Wayne, Michigan. (See Petitioner Exhibit C)

3. On November 29, 2006 the HCLRF made payment of \$5, 200.00 to Stock Building Supply LLC, pursuant to a Consent Judgment. (Petitioner Exhibit C)
4. The HCLRF incurred litigation costs in the amount of \$1,050.00.
5. The facts underlying the payment arose out of and in connection with the performance of Respondents' duties as licensed residential builder and/or residential maintenance and alteration contractor.
6. Respondent, failed to remit money, which belonged to John Corbett and Julie Corbett to Stock Building Supply LLC, contrary to MCL 339.2411(2)(c).
7. Respondent failed to satisfy a lien filed on October 17, 2005 by Stock Building Supply LLC, in the County of Wayne, Michigan, contrary to MCL 339.2411(2)(l).

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). Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Sections 2411(2)(c) &(l) and 2411(3) of the Code.

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. Respondent pay restitution to the HCLRF in the amount of \$6,250.00 which includes litigation cost of (\$1,050.00).
3. Respondent's license remained revoked until the civil fine and restitution have been paid.



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 5th day of May, 2008.

Loredana Ardelean

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State Office of Administrative Hearings and Rules

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