

**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. 2008-102
Complaint No. 305538**

Complainant,

v

**GTD BUILDERS LLC
TIMOTHY PAUL GRASSLEY, QUALIFYING OFFICER
License No. 21-02-166305**

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 2, 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. 305538 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 \$2,100.00 and \$2,100.00 in litigation costs, fees and interest at the statutory rate from October 12, 2006, payable to the Homeowner Construction Lien Recovery Fund and mailed to Department of Labor & Economic Growth, 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. It is the intent of the Board that the fine and restitution be assessed one time in order to satisfy Final Orders issued for complaint Numbers 305538 and 305539. Once the fine and restitution ordered in one of the companion Final Orders is 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 30th day of October, 2008.

BY: 
Mark T. Glynn, Chairperson

Date mailed: October 30, 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.	2008-101
Bureau of Commercial Services, Petitioner	Agency No.	305539
v	Agency:	Bureau of Commercial Services
Timothy Paul Grassley, Respondent	Case Type:	Sanction

Bureau of Commercial Services, Petitioner	Docket No.	2008-102
v	Agency No.	305538
GTD Builders LLC Timothy Paul Grassley, Qualifying Officer, Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

Issued and entered
this 2nd 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 November 15, 2007 against GTD Builders LLC and Timothy Paul Grassley, Qualifying Officer (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 on March 5, 2008. The notice was properly sent to Respondents' last known address of record. Administrative Law Judge Michelle Howie presided. Mike Freeza appeared on behalf of Petitioner. Neither Respondents nor an attorney on his behalf of the Respondents appeared at the hearing.

The hearing proceeded 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.

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondents 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.

(I) **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. Respondents, have, 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 as to when the license was subsequently revoked on July 16, 2007 after lapsing.
2. On October 13, 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 Monroe Aluminum Products, Inc., in the amount of \$2,100.00 in the County of Monroe, Michigan. (See Complaint Exhibit 2)
3. On October 31, 2006, the HCLRF made payment of \$2, 100.00 to Monroe Aluminum Products, Inc., pursuant to the default judgment. (Petitioner Exhibit 4)
4. The HCLRF incurred litigation costs in the amount of \$2,100.00. (Petitioner Exhibit 7)
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 W. Nunn and Beulah J. Nunn to Monroe Aluminum Products, Inc., contrary to MCL 339.2411(2)(c).

7. Respondent failed to satisfy a lien filed on July 14, 2004 by Monroe Aluminum Products, Inc, in the County of Monroe, Michigan, contrary to MCL 339.2411(2)(l).
8. Respondent Timothy Paul Grassley was a party to the acts and omissions and was in a position to ensure compliance with the Code or otherwise prevent the violations but failed to do so.

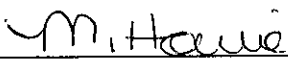
CONCLUSIONS OF LAW

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 Section 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 \$4,200.00 which includes litigation cost of (\$2,100.00).
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 2nd day of May, 2008.



Loredana Ardelean

State Office of Administrative Hearings and Rules

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

Timothy Paul Grassley, Q.O.
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Monroe, MI 48161