

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*
WILLIAM SUAREZ

Docket No. 2008-73
Complaint No. 306478

Complainant,

v

CHRISTOPHER DALE FALKIEWICZ
License No. 21-01-101223

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 Roger E. Winkelman, Administrative Law Judge, dated April 11, 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 \$2,000.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 306478 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 \$19,675, to William Suarez by certified check made payable to William Suarez and mailed to 28858 Marquette, Garden City, MI 48135, within 60 days from the mailing date of this Final Order.
3. Respondent's failure to comply with each and every condition of this Final Order shall result in REVOCATION of any and all Article 24 licenses held by Respondent. 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 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.

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
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.	2008-73
Bureau of Commercial Services, Petitioner	Agency No.	306478
v Christopher Dale Falkiewicz, Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

Issued and entered
this 11th day of April, 2008
by Roger E. Winkelman
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the filing 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) dated January 15, 2008, charging Christopher Dale Falkiewicz (Respondent) with one or more violations of the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.* Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*, 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 hearing was set for Wednesday April 9, 2008 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, and

the same proceeded as scheduled. Roger E. Winkelman presided as Administrative Law Judge. Kim Breitmeyer, Administrative Law Specialist, appeared on behalf of the Petitioner. Christopher Dale Falkiewicz (Respondent) appeared in pro per. William Suarez (Homeowner) and his daughter Michelle appeared at the hearing. Joe Dimichele, building inspector, also appeared.

ISSUES AND APPLICABLE LAW

The general issue presented is whether Respondent violated the Code, with respect to the practice of residential building. The specific issues are whether Respondent violated MCL 339.604(c), MCL 339.2411(2)(m), and 1979 AC, R 338.1551(4), 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:

(m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

Rule 51. (1) A complaint shall be submitted in a form specified by the department.

(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.

EXHIBITS

Petitioner offered the following 13 exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Purchase Agreement
2	Settlement Statement
3	List of Construction defects
4	Estimates
4a	photo
4b	photo
4c	photo
4d	photo
4e	photo
4f	photo
4g	photo
5	Building Inspection Report
6	Photos by Building Inspector

Respondent did not offer any exhibits for consideration at the hearing:

FINDINGS OF FACT

At the outset of the hearing the building code violations were stipulated to by both parties. There was no disagreement as to the violations as enumerated in the Building Inspection Report.

Respondent did not offer any evidence at 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 AACRS, R 339.1763.

Violation of Section MCL 339.604(c), MCL 339.2411(2)(m), and 1979 AC, R 338.1551(4), of the Code

By this charge, Petitioner asserts that Respondent failed to construct the residential structure in a workmanlike manner. Respondent stipulated to all the violations

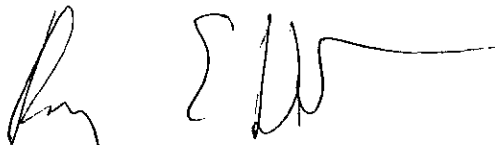
in the Building Inspection Report.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent violated MCL 339.604(c), MCL 339.2411(2)(m), and 1979 AC, R 338.1551(4), of the Code as described in this Hearing Report. Petitioner recommended that sanctions include a fine of \$2,000.00 and restitution to William Suarez (Homeowner) in the amount of \$19,675.00.

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

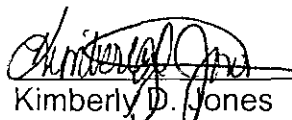
1. Payment of a civil fine in the amount that the Board deems fair and reasonable.
2. Payment of restitution to Homeowner in the amount of \$19,675.00
3. In the event the civil fine and restitution have not been paid within 60 days following the issuance of a final order, then all Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine and restitution have been paid. In the event the civil fine and restitution have not been paid within 6 months following the issuance of a final order, then all Article 24 licenses should be revoked.



Roger E. Winkelman
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 11th day of April, 2008.



Kimberly D. Jones
State Office of Administrative Hearings and Rules

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Garden City, MI 48135

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Westland, MI 48185

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