

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*
BRUCE DAVIS

Docket No. 2008-317
Complaint No. 307314

Complainant,

v

RONALD B. JANISZEWSKI
License No. 21-01-163445

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 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, 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. 307314 must be clearly indicated on the check or money order, and the payment sent to the Department of Labor & Economic Growth, Bureau of Commercial, Administrative Services Division, P.O. Box 30018, Lansing, Michigan 48909.
2. Respondent shall pay RESTITUTION in the amount of \$7,500.00, to Bruce Davis by certified check made payable to Bruce Davis and mailed to Bruce Davis, 2180 Annabelle, Detroit, MI 48217, within 60 days from the mailing date of this Final Order.
2. 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 licenses held by Respondent are 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.

3. 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.


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.	2008-317
Bureau of Commercial Services, Petitioner	Agency No.	307314
v	Agency:	Bureau of Commercial Services
Ronald B. Janiszewski, Respondent	Case Type:	Sanction

**Issued and entered
this 9th day of April, 2008
by Roger E. Winkelman
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) dated March 6, 2008. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA), 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 Tuesday April 8, 2008 at 9:00a.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 9:30a.m. Roger E. Winkelman presided as Administrative Law Judge. Serene Katranji-Zeni, Assistant Attorney General, 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 residential building. The specific issues are whether or not Respondent violated MCL 339.604(b) & (c), MCL 339.2411(2)(a), (c), & (j) and 1979 AC, R 338.1536, 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:

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

(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.

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

Rule 36. Acceptance or performance of a contract procured by a salesperson not licensed under a builder or contractor, or acceptance or performance of a contract, other than the sale of real property, procured by anyone not licensed under the act, is prohibited.

EXHIBITS

Petitioner offered the following 4 exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Certificate of License
2	Contract
3	Copy of Paid Checks
4	Proof of Service

FINDINGS OF FACT

Respondent has, at times relevant to this Complaint been licensed as a residential builder under the Occupational Code except as to those events that occurred after May 31, 2007, at which time the license lapsed.

A Complaint against Respondent, conforming to the requirements of MC L 339.2411 has been filed with the Michigan Department of Labor & Economic Growth.

Respondent or Respondent's agent, entered into a contract to perform services regulated by 1980 PA 299, as amended, with Bruce Davis on or about November 3, 2005.

At the time Lawrence Bird entered into the contract, Lawrence Bird was not licensed, although required to be licensed pursuant to 1980 PA 299, supra.

Respondent has employed Lawrence Bird, a person not licensed under 1980 PA 299, as amended, although required to be licensed. (contrary to MCL 339.2411(2)(j))

Respondent accepted a contract procured by a person not licensed under Respondent. (contrary to 1979 AC, R 338.1536)

On November 3, 2005, and December 8, 2005, Complainant Bruce Davis remitted to Respondent the amounts of \$4,000.00 and \$3,500.00.

Respondent accepted the monies, but has not performed the services for

which payment was accepted.

Respondent has failed and refused to return said monies, thereby engaging in conduct which is fraudulent, deceitful, or dishonest within the meaning of Section 604(b) of the Occupational Code.

Respondent has, without legal excuse, failed to perform the terms of the contract. (contrary to MCL 339.2411(2)(a))

Respondent has failed to account for monies belonging to Bruce Davis. (contrary to MCL 339.2411(2)(c))

Respondent has violated a rule of conduct in practicing an occupation. (contrary to MCL 339.604(c))

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 MCL 339.604(b) & (c), MCL 339.2411(2)(a), (c), & (j) and 1979 AC, R 338.1536, as described in the Formal Complaint.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent has violated MCL 339.604(b) & (c), MCL 339.2411(2)(a), (c), & (j) and 1979 AC, R 338.1536, subjecting Respondent to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include restitution in the amount of \$7,500.00 to Bruce Davis

and a fine of \$1,500.00.

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

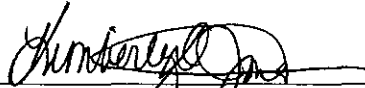
1. Payment of a civil fine in the amount that the Board deems fair and reasonable
2. Payment of restitution to Bruce Davis in the amount of \$7,500.00
3. In the event the civil fine and restitution have not been paid within 60 days following the issuance of a final order, then all Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine and restitution have been paid.



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 9th day of April, 2008.



Kimberly D. Jones

State Office of Administrative Hearings and Rules

Ronald B Janiszewski
445 Superior Blvd.
Wyandotte, MI 48192

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