

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH¹
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS

DEPARTMENT OF ENERGY, LABOR &
ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES *ex rel*
GARY AND LIZ CHAMPION

Docket No. 2008-631
Complaint No. 300491

Complainant,

v

ROBERT BRUCE JANDRON, JR.
D/B/A JANDRON CUSTOM HOME BUILDERS
License No. 21-01-168494

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 14, 2009;

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 James Sisk, Administrative Law Judge, dated April 23, 2009;

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 \$3,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 300491 must be clearly indicated on the check or money order, and the payment sent to the Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, P.O. Box 30018, Lansing, Michigan 48909.

¹ Effective December 28, 2008, by Executive Order 2008-20, the Department of Labor & Economic Growth (DLEG) was reorganized and renamed as the Department of Energy, Labor & Economic Growth (DELEG).

3. Respondent's failure to comply with each and every condition of this Final Order shall result in SUSPENSION of any and all Article 24 licenses held by Respondent. 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 shall submit in writing to the Michigan Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, 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 Energy, 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 28th day of September, 2009.

BY: 
Mark T. Glynn, Chairperson

Date mailed: September 28, 2009

Proof of Compliance should be filed with:

Department of Energy, Labor & Economic Growth, Bureau of Commercial Services
Final Order Monitoring
P.O. Box 30018
Lansing, MI 48909

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of _____ Docket No. 2008-631

**Bureau of Commercial Services,
Petitioner**

Agency No. 300491

V

**Agency: Bureau of Commercial
Services**

**Robert Bruce Jandron, Jr.
d/b/a Jandron Custom Home Builders,
Respondent**

Case Type: Sanction

Issued and entered
this 23rd day of April, 2009
by James Sisk
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Request for Hearing (Request) on May 15, 2008. Pursuant to receipt of the Request, the State Office of Administrative Hearings and Rules (SOAHR) issued a Notice of Hearing (Notice) on May 19, 2008. The Notice scheduled a contested case hearing for August 7, 2008.

At the request of Petitioner, the Administrative Law Judge (ALJ) adjourned the hearing and rescheduled it for September 4, 2008.

By stipulation of the parties, the contested case hearing scheduled for September 4, 2008 was converted to a pre-hearing conference. Harold J. Martin, Assistant Attorney General (AAG), participated for Petitioner. Robert P. Judici, Attorney, participated on behalf Respondent.

Respondent filed a Motion to Dismiss the Proceeding on the basis of *res judicata* and collateral estoppel. Both parties submitted briefs in support of and opposition to the Motion.

On January 6, 2009, the ALJ conducted a hearing on the Motion to Dismiss. Having reviewed the Motion, the parties' briefs, having heard oral argument, and being fully advised in the premises, the ALJ issued an Order Denying the Motion to Dismiss on January 12, 2009.

On January 12, 2009, February 3, 2009, and March 3, 2009, the ALJ conducted contested case hearings. The following parties participated in one or more of the contested case hearings:

Harold J. Martin (AAG)	Attorney for Petitioner
Gary Champion	Complainant
Robert Bruce Jandron, Jr.	Respondent
Robert P. Judici	Attorney for Respondent
Fred Martin	Witness

The Notices of Hearing were issued pursuant to a Formal Complaint (Complaint) filed February 20, 2008. The Complaint alleged that Respondent violated the Occupational Code, 1980 PA 299, as amended, being MCL339.101, *et. seq.*, (Code), and the Administrative Rules promulgated pursuant thereto.

During the hearing, Petitioner admitted the following exhibits into the record:

Petitioner's Exhibit #1	Complaint filed August 7, 2005
Petitioner's Exhibit #2	Addendum to Complaint filed September 8, 2005
Petitioner's Exhibit #3	Basement and Garage Construction Contract dated March 10, 2005
Petitioner's Exhibit #4	Building Permit dated April 18, 2005

Petitioner's Exhibit #5	Residential Mechanical Permit dated April 18, 2005
Petitioner's Exhibit #6	Electrical Permit dated June 10, 2005
Petitioner's Exhibit #7	Building Permit #82-NC-7-05B
Petitioner's Exhibit #8	Building Inspection Report dated September 6, 2005
Petitioner's Exhibit #9	Building Inspection Report dated October 7, 2005
Petitioner's Exhibit #10	Request for Completion of Building Inspection Report dated October 6, 2005
Petitioner's Exhibit #11	Various Photographs of Basement

At the hearing, Respondent also introduced the following exhibits:

Respondent's Exhibit #1	Photographs of House Across Street from Subject Property
Respondent's Exhibit #2	Photograph of Subject Property
Respondent's Exhibit #3	Photograph of Another House in Same Subdivision
Respondent's Exhibit #4	Photograph of House Under Construction in Same Subdivision As Subject Property
Respondent's Exhibit #5	Photograph of Occupied Residence in Same Subdivision As Subject Property
Respondent's Exhibit #6	Partial List of Items Needing Correction
Respondent's Exhibit #7	Last Page of Building Permit Application
Respondent's Exhibit #8	Final Blueprint of House To Be Put On Subject Property
Respondent's Exhibit #9	Photographs of Water & Sewer Construction
Respondent's Exhibit #10	Price Quotation of General Housing Corporation (GHC) dated April 22, 2005

Respondent's Exhibit #11	Menard's Price Quote Sheet
Respondent's Exhibit #12	Two (3) Photographs of Foundation
Respondent's Exhibit #13	Five (5) Photographs of Window Well & Back Corner of Foundation
Respondent's Exhibit #14	Xerox Photograph of Foundation
Respondent's Exhibit #15	Schematic Drawing Made by Respondent
Respondent's Exhibit #16	GHC Invoice dated May 15, 2005
Respondent's Exhibit #17	Photographs of Grading Near Foundation of Subject Property

ISSUES AND APPLICABLE LAW

This matter raises the general issue of whether Respondent violated the Code or the Rules. Specifically, this matter raises the issue of whether Respondent violated §§ 604(c), 2411(2)(e), and 2411(2)(m) of the Code, being MCL 339.604(c) and MCL 339.2411(2)(e) and (m), and AACCS Rule 51(5), being R338.1551(5), of the Residential Builders and Maintenance and Alteration Contractors Board Rules. Those Sections and Rules provide in pertinent part:

§604(c), MCL339.604(c), provides:

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.

§2411(2)(e) and (m), MCL 339.2411(2)(e) and (m), provide:

Sects. 2411(2)(e) and (m). A licensee or applicant who commits 1 of the following shall be subject to the penalties set forth in article 6:

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

...(m) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code official.

§2411(5)(f), MCL339.2411(5)(f), provides:

Sec. 2411(5) Notwithstanding article 5, the following apply to administrative proceedings regarding workmanship under subsection (2)(m):...

...(f) The complainant shall demonstrate that notice has been provided to the licensee describing reasonable times and dates that the residential structure was accessible for any needed repairs and proof acceptable to the department that the repairs were not made within 60 days after the sending of the notice. This subdivision does not apply where the department determines a necessity to safeguard the structure or to protect the occupant's health and safety and, in such case, the department may utilize any remedy available under section 504(3)(a) through (d).

Rule 51(5), R338.1551(5), provides:

Rule 51(5). Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

Rules 109.1.1 and 109.1.2 of the 2003 Michigan Residential Code (MRC) provides:

Rule 109.1.1 Foundation Inspection. Inspection of the foundation shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations.

Rule 109. 1.2. Rough inspection of plumbing, mechanical, gas and electrical systems shall be made prior to covering and concealment, before fixtures or appliances are set or installed, and prior to framing inspection.

Exception: Ground-source heat pump loop systems tested in accordance with Section M2105.1 shall be permitted to be *backfilled prior to inspection.*

Rule 310.2.1 of the 2003 MRC provides:

Rule 310.2.1. Window wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with a permanently affixed ladder or steps usable with the window in the fully open position. Ladders or steps required by this section shall not be required to comply with Sections R311.5 and R311.6. Ladders or rungs shall have an inside width of at least 12 inches (305 mm), shall project at least 3 inches (76 mm) from the wall and shall be spaced not more than 18 inches (457 mm) on center vertically for the full height of the window well.

FINDINGS OF FACT

1. Respondent has, at all times relevant to this matter, been a licensed residential builder pursuant to the Code.
2. Respondent acted as a sales and installation agent for GHC, a modular home construction business.
3. In 2005, Complainant, Champion, approached Respondent with a sketch of a proposed home to be constructed by GHC.
4. After GHC made modifications, Complainant purchased the home from GHC at a total price of \$102,500.00, including installation on the foundation by Respondent.
5. Complainant and his wife contracted separately with Respondent for construction of a basement, foundation, and garage on the subject property at a total price of \$31,100.00.
6. Through subsequent change orders, Complainant arranged for Respondent to install a basement stairway, driveway; replace a window in the residence with a patio door, install an egress ladder in the basement, and cut an access to the attic.
7. In the course of construction, the following problems occurred:

- (a) Foundation walls not properly insulated and waterproofed;
 - (b) Foundation walls backfilled before inspection;
 - (c) Completed water & sewer lines backfilled before inspection;
 - (d) Patio door installed not one ordered;
 - (e) Interior doors and trim not properly matched and installed;
 - (f) Base caps for porch pillars not properly fitted;
 - (g) Mortar cracks in front porch;
 - (h) Attic access cut in inconvenient location and not framed;
 - (i) Basement stairway and drywall construction not completed,
and
 - (j) Failure to install a basement egress ladder
8. On September 6, 2005, Martin, a local building inspector, inspected the subject property.
9. Martin's inspection uncovered the following Code violations:
- (a) Basement not insulated and waterproofed properly in violation of Rule 1074 of the Michigan Uniform Energy Code.
 - (b) Water and sewer lines and foundation backfilled before inspection in violation of R109 of 2003 MRC.
10. Martin's inspection revealed the following workmanship violations:
- (a) City curb not cut at driveway exit;
 - (b) Plate not shimmed between block and sill plate;
 - (c) Main door frame blistering and peeling, and
 - (d) Light visible at upper corners of garage door.
11. Additionally, Martin found the following contractual violations:
- (a) Colors of trim and cabinets did not match, and
 - (b) Rock face sealed.
12. On October 7, 2005, Martin conducted a follow-up inspection of the subject property.
13. On second inspection, Martin found that Respondent had corrected the following violations:
- (a) Plumbed, shimmed, and leveled the garage;
 - (b) Mortar cracks in block and porch repaired, and
 - (c) Basement egress ladder installed.

14. Respondent testified that the contract with Complainant to construct a driveway did not require him to cut the city curb, and the City of Negaunee prohibited cutting the curb without specific permission from it to do so.

15. Respondent understood that Complainant had the responsibility to get permission to cut the curb and did not do so.
16. Respondent testified, also, that he built the driveway in a way that cutting the curb became unnecessary.
17. With respect to the basement egress ladder, Respondent testified that Complainant obtained an occupancy permit for the subject property before delivery of the egress ladder by manufacturer.
18. Respondent insisted that the contract to construct the foundation did not require that he insulate it.
19. Respondent testified that Complainant retained the responsibility to insulate it because he planned to finish the basement so that it could be used for living space.
20. Respondent testified that Complainant changed the final blueprint for the custom home and replaced a window with a patio door.
21. Complainant insisted on installing a door with a grill that Respondent could not get from his supplier.
22. Respondent testified that he waterproofed the foundation walls.
23. Respondent attributed water leaks in the foundation walls to problems with the grading of the backfill, and Complainant contracted with another subcontractor to perform that work, and a failure to install eaves troughs on the roof, which Respondent recommended, but Complainant decided not to do.
24. Complainant hired another contractor to dig up the basement, reseal the foundation wall, and install drain tile.
25. Respondent testified that the final blueprint accepted by Complainant for construction of the custom home by GHC showed the attic access site to be in a hallway.
26. Respondent testified that Complainant objected to the location of the access site, and, together, they tried, without success, to agree upon an alternative location for the access.
27. Respondent finally cut an access hole to the attic through a closet ceiling at the direction of Complainant's attorney.

28. Respondent admitted that he did not frame the cut.
29. Respondent informed Complainant that he anticipated problems in matching the color of the cabinet and trim, but Complainant signed off on ordering them anyway.
30. Respondent backfilled the water and sewer pipes at the insistence of the City of Negaunee Public Works Department, and the pipes passed inspection after being dug up and inspected.
31. Complainant, himself, hired most of the subcontractors to do the work, and Respondent only accepted bids from them and passed them along to Complainant.
32. Respondent insisted that Complainant never gave him notice of the alleged workmanship issues along with information as to when he could gain access to the subject property to make necessary repairs.
33. In written, closing argument submitted by the parties, Petitioner raised an alleged violation of §2404a, MCL 339.2404a, because the contract involved in this matter contained no statement regarding Respondent's license.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. *8 Callaghan's Michigan Pleading and Practice (2ed.)*, §60.48, page 230.

Petitioner has the burden of proof to establish by a preponderance of the evidence that grounds exist for the imposition of sanctions pursuant to 1990 AACRS, R339.1763.

Considering the record of this matter, including the pleadings, exhibits, and default granted, the ALJ makes the following conclusions of law:

1. The Code does not provide for relief for contractual issues that do not constitute Code or workmanship violations. Therefore, this Tribunal has no authority to make any findings with respect to such violations. Those matters may be resolved through the use of the civil litigation process.
2. Similarly, the Formal Complaint did not allege a violation of §2404a, MCL 339.2404a, and Petitioner made no Motion to Amend the Formal Complaint. As a

consequence, the ALJ finds that the issue is not under consideration at this time, and the ALJ will not make a decision on any alleged violation thereof.

3. As a licensed, residential building contractor under the Code, Respondent has a responsibility to assure compliance with the Code and the MRC when performing any work regulated by the Code. Respondent cannot contract away that responsibility to Complainant, nor can Complainant waive the requirement that Respondent perform the work in compliance with the Code and the MRC. To find otherwise would thwart the purpose behind the Code and the MRC. Such agreements would be void as against public policy.
4. By not properly insulating the basement foundation walls, Respondent violated Rule 1074 of the Uniform Energy Code.
5. By backfilling the foundation and water and sewer pipes before they were inspected, Respondent violated Rule 109.1.1 and .2 of the 2003 MRC and §§604(c) and 2411(2)(e), being MCL 339.604(c) and MCL 339.2411(2)(e).
6. While Respondent failed to provide a basement egress ladder as of the date of the initial inspection, Respondent had ordered the ladder. Unfortunately, delivery did not occur before an occupancy permit was issued for the subject property. Respondent installed the egress ladder promptly upon its delivery by the manufacturer, and he corrected the violation of Rule 310.2.1 of the 2003 MRC. For these reasons, the ALJ finds that Respondent did not violate Rule 310.2.1 of the 2003 MRC.
7. Respondent corrected some of the workmanship violations, such as plumbing and leveling the garage and patching the mortar cracks, between Martin's first and second inspections. Because he corrected those problems, Respondent is not in violation of §§2411(2)(e) and (m), MCL339.2411(2)(e) and (m), of the Code as to those matters.
8. Since the record contains no evidence that Complainant gave notice to Respondent of the workmanship problems, together with information of when he could access the structure to make the repairs, §2411(5)(f), MCL339.2411(5)(f), bars a finding of a violation of §§2411(2)(e) and (m), MCL339.2411(2)(e) and (m), with respect to the remaining workmanship issues.

DECISION

Based upon the findings of Fact and Conclusions of Law, the ALJ finds that Respondent has violated §§604(c) and 2411(2)(e) of the Code, Rule 109.1.1 and .2 of the

2003 MRC, and Rule 1074 of the Uniform Energy Code as to installation and water proofing of the foundation walls and backfilling the water and sewer pipes before inspection.


In regard to §2411(2)(e) and (m), MCL 339.2411(2)(e) and (m), and Rule 310.2.1 of the 2003 MRC, the ALJ finds no violation with respect to the basement egress ladder because Respondent corrected the problem upon delivery of the ladder by the manufacturer.

In regard to the remaining workmanship violations, the ALJ finds no violation of §2411(2)(e) or (m), MCL 339.2411(2)(e) and (m) because the record is devoid of any evidence that Complainant gave Respondent the required notice and opportunity to correct the workmanship problems required by §2411(5)(f), MCL 339.2411(5)(f).

RECOMMENDATIONS

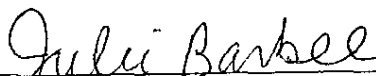
Based upon the Findings of Fact and Conclusions of Law contained in this Decision, the ALJ makes the following recommendations for disposition of this matter:

1. Require Respondent to pay a civil fine in the amount of \$ 3,000.00 within 60 days of the date of the Board's Final Order.
2. Suspend any and all licenses held by Respondent and/or any business owned by Respondent that come within the jurisdiction of the Code for a period of 60 days, or until the civil fine is paid in full, whichever occurs later.


James W. Sisk
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 23rd day of April, 2009.



Julie Barbee

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