

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*
ANDY AND KELLY STARR

Docket No. 2008-1587
Complaint No. 307189

Complainant,

v

C & L HOLDINGS, INC.
STEVEN EDWARD CARPENTER, QUALIFYING OFFICER
License No. 21-02-159666

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 Michelle Howie, Administrative Law Judge, dated April 29, 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 \$1,500.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 307189 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, MI 48909.
2. Respondent shall pay RESTITUTION in the amount of \$11,192.64 to Andy and Kelly Starr, by certified check made payable to Andy and Kelly Starr and mailed to Andy and Kelly

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).

Starr, 8960 Championship Drive, Davison, MI 48423 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 within 60 days shall result in SUSPENSION of any and all Article 24 licenses held by Respondent or 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 also the intent of the Board that the fine and restitution be assessed one time in order to satisfy the Final Orders issued for complaint Numbers 307189 and 307190. Once the fine and restitution ordered in one of the companion Final Orders are 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 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: Sept. 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. 2008-1585

**Bureau of Commercial Services,
Petitioner**

Agency No. 307190

v

**Steven Edward Carpenter,
Respondent**

Agency: Bureau of Commercial
Services

Case Type: Sanction

and

**Bureau of Commercial Services,
Petitioner**

Docket No. 2008-1587

v

**C & L Holdings, Inc.,
Steven Edward Carpenter
Qualifying Officer,
Respondent**

Agency No. 307189

Agency: Bureau of Commercial
Services

Case Type: Sanction

**Issued and entered
this 29th day of April, 2009
by Michelle Howie
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuing of Formal Complaints dated April 28, 2008, by the Department of Energy Labor and Economic Growth, Bureau of Commercial Services (Petitioner), against C & L Holdings, Inc. and Steven Edward Carpenter, Qualifying Officer (Respondents), alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101, *et seq.* and the administrative rules promulgated thereunder.

The hearing was held at 9:00 a.m. on January, 28, 2009, at the State Office of Administrative Hearings & Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, Detroit, Michigan. Administrative Law Judge Michelle Howie presided. Kimberly Breitmeyer, Administrative Law Specialist, appeared on behalf of Petitioner. Paul Goyette, Attorney at Law, appeared for Respondent. Andrew Starr (homeowner) and Matthew Place (Building Inspector) testified as witnesses for Petitioner. Steven Carpenter testified on his own behalf.

SUMMARY OF EXHIBITS

Petitioner Exhibits

- 1 Purchase Agreement (1-20-05)
- 2 Settlement Statement
- 3 Pictures of Home (1-18-08)
- 4 Repair Estimates
- 5 Building Inspection Report (6-11-07)

ISSUES AND APPLICABLE LAW

The specific issues in this case is whether Respondent violated MCL 339.604(c), 339.2411(2)(m) of the Occupational Code, 1980 PA 299; and Rules 51(4) & 51(5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder, being 1979 AC R 338.1551(4) & (5) and 2006 ACCS, R 338.1551(4); which provides, in pertinent part::

Section. 604. A person who violates 1 or more of the following 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.

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:

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

Rule 51. (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.

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.

FINDINGS OF FACT

Based on the record, the following findings of fact are established:

1. C & L Holding and Steven Edward Carpenter, has, at all times relevant to this complaint, been licensed as residential builders under Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412.

2. On or about November 20, 2005, Respondent Steven Edward Carpenter on behalf of Respondent C & L Holdings, Inc., entered into a purchase agreement to sell to Andrew Starr, the residential structure located at 8960 Championship Drive, Davison, Michigan 48423, which was constructed by and under the license of

Respondent C & L Holdings, Inc. and which construction was regulated by the Occupational Code. Petitioner Exhibit 1

3. On or about December 19, 2005, the sale was consummated pursuant to the purchase agreement between the parties. Petitioner Exhibit 2

4. Prior to the homeowners moving into the property, Respondent and the homeowners were aware of a roof leak within the walls of the foyer area which caused the hardwood floors to buckle. However, the exact problem had not been determined due to the winter weather. Respondent assured the homeowners that the matter would be resolved.

5. Respondent sent two different contractors at different times to repair the roof leak. However, they were unsuccessful. At one point both parties thought the roof leak was resolved, however, a few months later the roof began to leak again during heavy rain.

6. On June 8, 2007, the homeowners filed a complaint against Respondents with BCS, alleging several issues that they believed was the result of Respondent's poor workmanship on their home falling below applicable standards.

7. On June 11, 2007, Matthew Place, a Davison Township Building Inspector, conducted an inspection of the property and cited the following workmanship and code violations: (see Petitioner Exhibit 5)

- Roof leak (MRC 905);
- Basement wall leak (MRC 401)
- Floor & drywall damage from roof leak
- Basement door seal,
- Tile shower floor leak
- Cracks & broken brick step.

8. In early, 2008, the homeowners hired JKM Roofing Company to repair the roof leak because the several repair attempts made by Respondent's contractors were unsuccessful. The repair was successful and cost the homeowners \$2,300.00. (see Petitioner Exhibit 4).

9. The homeowners did not permit Respondent to repair the basement and bathroom problems because the parties disagreed regarding the scope of work to be performed. After Respondent's several attempts to repair the roof leak problems were unsuccessful, the homeowners lost faith in Respondent's ability to remedy their home problems.

10. The homeowners obtained the following estimates to address and repair those additional items identified as poor workmanship by the Inspector: (see Petitioner Exhibit 4)

- a. Paulson's Construction - \$6,974.59 to repair the basement wall leak and door seal problem;
- b. Ford's Custom Ceramic Tile - \$1,918.06 to repair the shower floor leak problem.

CONCLUSIONS OF LAW

A licensed residential builder is required to comply with the Occupational Code, as well as applicable administrative rules for the specific occupation. If a residential builder violates the Code or applicable rules, sanctions may be imposed. Before imposing sanctions the Department (BCS) must prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions against the Respondent. 1990 AACR R 339.1763. The ALJ is responsible for evaluating the testimony and evidence and for

determining whether the Respondent did, in fact, violate any of the applicable rules and provisions as alleged in the Formal Complaint.

Violation of Section 2411(2)(m)

By this allegation, Petitioner asserts that Respondent's workmanship in constructing the subject property, in several instances, fell short of applicable standards. Obviously, when something goes wrong with a home, it is not necessarily attributable to poor workmanship. For example, the Inspector identified water damaged floors and drywall damage in the foyer area as poor workmanship. However, the testimony and evidence did not demonstrate that Respondent did anything wrong in the installation of either item.

There were, however, other items observed by the Inspector that do appear to be attributable to poor workmanship such as roof leak, basement door seals being insufficient allowing for leaks and the bathroom shower floor leak into the basement. A roof or shower floor should not leak nor should water leak from under the doors of a newly constructed home absent some material construction or installation defect.

The evidence indicates that Respondent may have attempted to remedy some of the problems noted by the Building Inspector. However, Respondent's efforts do not excuse the initial poor workmanship. Michigan case law supports the proposition that workmanship and code violations are not cured merely because a contracting party later corrects what he was under an initial duty to do right the first time. *Arndt v State of Michigan*, 147 Mich App 97 (1985)

Accordingly, Petitioner has proven, by a preponderance of the evidence, a violation of Section 2411(2)(m) of the Code.

Violation of Section 604(c) and Rule 51(5)

By this allegation, Petitioner asserts that Respondent violated Builder Rule 339.1551(5) by failing to construct the subject property in accordance with sections 905 (roof) and 401(basement) of the Michigan Residential Code adopted by the Davison Township, thereby violating Section 604(c) of the Code.

In this case, Respondent built and sold the subject property to Andrew Starr for a substantial amount of money. At the time of the purchase in December 2005, Respondent was aware that there was a problem with the roof leaking in the foyer area of the property causing damage to the hardwood floors and drywall. Although Respondent's contractors made several attempts to repair the problem the leak continued until the homeowners finally had it repaired by another company in early 2008.

The remaining problems concerning leaks into the basement from the basement door and the bathroom shower floor continue and have yet to be repaired.

There are certain items such as a roof, shower floor and doors that should not leak on a newly constructed home in the absence of some material construction defect. A roof and doors are necessary and vital parts of any structure and when problems arise indicating they are not functioning properly it is a homeowner's nightmare. It is unreasonable to expect a homeowner to deal with a leaking roof or leaks from under doors for more than a few days, especially in Michigan, where winter weather can be harsh. What ever needs to happen to fix such problems should be done immediately. In the present case, the ALJ finds that it is more likely than not that the roof, basement doors, and shower floor would not have leaked if they were installed correctly from the outset.

Based on the evidence presented, Petitioner has established by a preponderance of the evidence a violation of Rule 51(5), thereby violating Section 604(c) of the Code.

Violation of Rule 51(4)

By this allegation, Petitioner asserts that Respondent failed to correct the complaint in a reasonable time. There was some evidence presented that indicated that the homeowners may have interfered with Respondent being able to make all necessary repairs identified by the Building Inspector at some point. This apparently occurred, however, after the homeowners lost confidence in Respondents ability to repair the roof problem after several failed attempts.

Such interference by a homeowner is relevant to the issue of whether a contracting party failed to correct the problems identified. Mr. Starr testified that they did not agree with the scope of work that Respondent was proposing, therefore, they did not permit Respondent to perform some of the repair work. As such Respondents cannot be held responsible for failing to make necessary repairs.

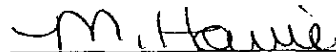
Accordingly, Petitioner has not established by a preponderance of the evidence a violation of Builder Rule 51(4).

The ALJ concludes that those items set forth in *finding of fact #7* were attributable to poor workmanship and/or code violations. The total estimated cost to address and correct those items with the exception of the cracked step is \$11,192.64. It is recommended that Respondent should make restitution to the homeowners for that *amount*.

RECOMMENDATIONS

Based upon the above findings of fact and conclusions of law, the Administrative Law Judge makes the following recommendations to the Board:

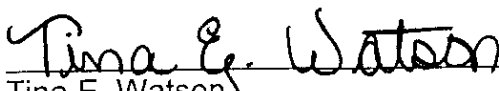
1. Respondent pay a civil fine in the amount of \$1,500.00.
2. Respondent make restitution to homeowner, Andrew Starr, the amount of \$11,192.64.
3. In the event the civil fine and restitution are not been paid within 60 days following the issuance of the Board's Final Order, then any Article 24 license or registration held by Respondent should be suspended and no new or renewal licenses or registrations should be issued 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 29th day of April, 2009.


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State Office of Administrative Hearings and Rules

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