

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*
DONALD AND DIANE RUEDGER

Docket No. 2009-711
Complaint No. 307882

Complainant,

v

CLARK WILLIAM DUERR
D/B/A CWD CONSTRUCTION
License No. 21-01-155959

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 Erick Williams, Administrative Law Judge, dated June 10, 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, and the Board having elected to exercise its authority pursuant to MCL 339.514 to impose penalties different from those recommended by the Administrative Law Judge; 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 of this Final Order. Complaint No. 307882 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.

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).

2. Any and all Article 24 licenses held by Respondent shall be and hereby are **IMMEDIATELY REVOKED**. 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.

3. 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
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.	2009-711
Bureau of Commercial Services, Petitioner	Agency No.	307882
v Clark William Duerr d/b/a CWD Construction, Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

Issued and entered
this 10th day of June, 2009
by Erick Williams
Administrative Law Judge

HEARING REPORT

BACKGROUND

The Bureau of Commercial Services issued a complaint against Clark Duerr on March 3, 2009, under MCL 339.604 and MCL 339.2411. A hearing convened under MCL 24.271 et seq. on June 9, 2009. Kim Brietmeyer represented the Bureau of Commercial Services. Notice of the hearing was sent to Mr. Duerr at addresses in Crystal and Carson City, Michigan and Belews Creek, North Carolina, however, no one appeared in behalf of Mr. Duerr, and the hearing continued in his absence. This opinion finds the complaint substantiated.

ISSUES AND APPLICABLE LAW

MCL 339.604 reads:

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....

(g) Commits an act which demonstrates incompetence.

MCL 339.2411 reads in part:

(1) A complaint filed under this section or article 5, or both, shall be made within 18 months after completion, occupancy, or purchase, whichever occurs later, of a residential structure or a combination of residential and commercial structure.

(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....

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

1979 AC R 338.1533 (3) reads:

(3) Changes in the agreement shall be in writing, dated and initialed by the parties to be bound.

2006 AACR R 338.1533 (1) reads:

Rule 33. (1) All agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties. Copies of all agreements and changes to agreements shall be in writing, and provided to the customer. [Effective 19 May 2006]

2006 AACR R 338.1551 (4) and (5) read:

(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.

(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

Mr. Duerr entered into a contract with Donald and Diane Ruedger on 19 Apr 2006; made several changes to the project throughout 2007, and accepted final payment in 2007. Some of the change orders were signed by Mr. Duerr but not signed by the homeowners.

In the course of the contract, Mr. Duerr failed to pay a supplier, Carson City Lumber, and the homeowners paid the supplier directly.

The Gratiot County building official inspected the project and found several code violations and workmanship defects, which have not been corrected. The inspection report also notes that the project was not completed.

Mr. Duerr filed for bankruptcy in April 2009.

CONCLUSIONS OF LAW

Having violated the building code, as determined in the inspection report, and having failed to correct the defects, Mr. Duerr violated MCL 339.604 (c) and 2006 AACS R 338.1551 (4) and (5).

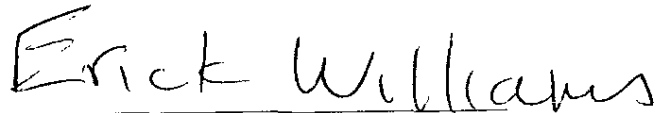
Having failed to pay a supplier, Mr. Duerr violated MCL 339.2411 (2) (c).

Having failed to perform the Ruedger job in a workmanlike manner, Mr. Duerr violated MCL 339.2411 (2) (m).

Having failed to have the Ruedgers countersign change orders, Mr. Duerr violated 1979 AC R 338.1533 (3) and 2006 AACS R 338.1533 (1)

Altogether, having done poor work, violated the building code, failed to correct defects, failed to complete a project, and failed to pay a supplier, Mr. Duerr demonstrated overall incompetence in violation of MCL 339.604 (g).

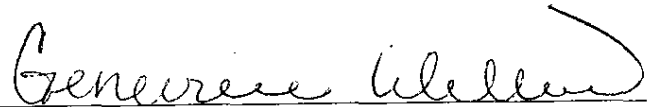
The Bureau of Commercial Services has recommended a \$9,500 fine.



Erick Williams
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 10th day of June, 2009.



Genevieve Williams
State Office of Administrative Hearings and Rules

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