

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*
DIANE JOHNS

Docket No. 2009-6
Complaint No. 309039

Complainant,

v

ADCO CONSTRUCTION LLC
AARON LYLE BRISLEY, QUALIFYING OFFICER
License No. 21-02-179134

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 Roger E. Winkelman, Administrative Law Judge, May 8, 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 \$5,000.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 309039 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. Respondent shall pay RESTITUTION in the amount of \$17,723.00 to Diane Johns, by certified check made payable to Diane Johns and mailed to Diane Johns, 3070 Elmwood Drive, Fort Gratiot, MI 48059 within 60 days from the mailing date of this Final Order. Further, Respondent shall pay RESTITUTION to Diane Johns by paying Quality Lumber and Building Wholesalers, Inc. in the amount of \$10,298.23, by certified check made payable to Quality Lumber and Building Wholesalers, Inc. and mailed to Quality Lumber and Building Wholesalers, Inc., PO Box 488, Richmond, MI 48062 and by paying Jeddo Drywall, Inc. in the amount of \$9,094.00, by certified check made payable to Jeddo Drywall, Inc. and mailed to Jeddo Drywall, Inc. 44700 Groesbeck Highway, Clinton Township, MI 48036 within 60 days from the mailing date of this Final Order.

3. The license of Respondent and any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officer 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'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. 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.	2009-6
Bureau of Commercial Services, Petitioner	Agency No.	309039
v	Agency:	Bureau of Commercial Services
Adco Construction, LLC Aaron Lyle Brisley, Q.O., Respondent	Case Type:	Sanction

Issued and entered
this 8th day of May, 2009
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 Energy, Labor & Economic Growth's Bureau of Commercial Services (Petitioner) dated January 5, 2009. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA), ADCO Construction, LLC, Aaron Lyle Brisley, Qualifying Officer (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 Wednesday March 11, 2009 at 9:00 a.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 Blvd., 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 9:30 a.m. Roger E. Winkelman presided as Administrative Law Judge. Tiffany Daugherty, Administrative Law Specialist, appeared on behalf of Petitioner. Diane Johns (Homeowner) and Robert Wiley former building inspector appeared at the hearing. 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(c) & (g), MCL 339.2411(2)(a), (c), (l) & (m) and 2006 AACSR 338.1551(5), 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.

(g) Commits an act which demonstrates incompetence.

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.

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

(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.

(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.

EXHIBITS

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

<u>Exhibit</u>	<u>Description</u>
1	Two Claims of Liens
2	Estimate for Repairs

FINDINGS OF FACT

Respondent, has, at all times relevant to this Complaint, been licensed as a residential builder under the Occupational Code (Code), except as to those events that occurred after May 31, 2008, at which time the license lapsed.

A Complaint against Respondent, conforming to the requirements of Section 2411 of 1980 PA 299, as amended; MCL 339.2411 has been filed with the Michigan Department of Labor & Economic Growth.

An authority charged with the enforcement of the laws governing construction of residential or residential and commercial buildings in the political subdivision in which the building is located, has submitted an evaluation of the Complaint.

Respondent entered into a contract to perform services regulated by 1980 PA 299, as amended, with Homeowner on or about January 2, 2007.

Respondent has failed to perform the requirements of the contract in a workmanlike manner.

Respondent, in performance of the contract, failed to comply with Rule 307, R401.3, R502.2.1, R401.3, R311.5.6.1, R307 and R602.8 of the 2003 Michigan Residential Code and 402.2.5 and 402.4 of the International Energy Conservation Code, which were adapted pursuant to the Stille-DeRossett-Hale single state construction code act, effective February 29, 2004.

Respondent failed to meet minimal standards of acceptable practice for Respondent's occupation as a residential builder.

Respondent has, without legal excuse, failed to perform the terms of the contract.

Respondent failed to satisfy a lien, filed on August 8, 2007, by Jeddo Drywall, Inc., in the County of St. Clair, Michigan.

Respondent failed to satisfy a lien, filed on July 3, 2007, by Quality Lumber and Building Wholesalers, in the County of St. Clair, Michigan.

Respondent has failed to pay money to subcontractors and/or suppliers with whom Respondent has contracted to perform services required by the contract.

Homeowner received an estimate of \$17,723.00 for repairs associated with Respondent's work under the contract (Exhibit 2).

Respondent has violated a rule of conduct in practicing an occupation.

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(c) & (g), MCL 339.2411(2)(a), (c), (l) & (m) and 2006 AACS R 338.1551(5), 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(c) & (g), MCL 339.2411(2)(a), (c), (l) & (m) and 2006 AACRS R 338.1551(5) subjecting Respondent to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include payment of 1) \$10,298.23 to Quality Lumber and Building Wholesalers, Inc.; 2) \$9,094.00 to Jeddo Drywall, Inc.; 3) restitution in the amount of \$17,723.00 to Homeowner.

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

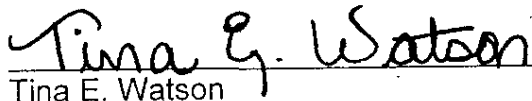
1. Payment of a civil fine in the amount that the Board deems fair and reasonable.
2. Payment of \$10,298.23 to Quality Lumber and Building Wholesalers, Inc., payment of \$9,094.00 to Jeddo Drywall, Inc., and restitution to Diane Johns of \$17,723.00.
3. All Article 24 licenses should be Revoked



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 8th day of May, 2009.



Tina E. Watson

State Office of Administrative Hearings and Rules

Aaron Lyle Brisley
Adco Construction, LLC
7514 Hewitt
Avoca, MI 48006

Aaron Lyle Brisley
Adco Construction, LLC
P.O. Box 1064
Bolivar, MO 65613

Diane Johns
3070 Elmwood Drive
Fort Gratiot, MI 48059

Lois Hopkins
Attorney General
525 W. Ottawa Second Floor
Lansing, MI 48913

Stephen J. Gobbo
Bureau of Commercial Services
2501 Woodlake Circle
Okemos, MI 48864