

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*
TERRY E. WAHRMAN

Docket No. 2009-605
Complaint No. 311143

Complainant,

v

CHESTER ANDREW BAJAS
License No. 21-01-155012

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 David Cohen, Administrative Law Judge, dated June 2, 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 date of this Final Order. Complaint No. 311143 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).

2. Respondent shall make RESTITUTION to Terry E. Wahrman by paying in full the Judgment dated September 10, 2008 entered in State of Michigan, 52-1 Judicial District Court, Case No. 08C06739-GC in the amount of \$9,140.00, plus statutory interest and any additional costs by certified check made payable Terry E. Wahrman and mailed to Terry E. Wahrman, 22143 Chase Drive, Novi, MI 48375 within 60 days from the mailing date of the Final Order.

3. 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 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: 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.	2009-605
Bureau of Commercial Services, Petitioner	Agency No.	311143
v	Agency:	Bureau of Commercial Services
Chester Andrew Bajas, Respondent	Case Type:	Sanction

Issued and entered
this 2nd day of June, 2009
by David Cohen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuing of a Formal Complaint dated February 24, 2009 by the Department of Energy, Labor and Economic Growth, Bureau of Commercial Services, (Petitioner), against Chester Andrew Bajas, (Respondent), 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.

A Notice of Hearing was issued scheduling a contested case hearing on May 14, 2009, at 9:00 a.m. at State Office of Administrative Hearings & Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, Detroit, Michigan, and the hearing proceeded as scheduled. Administrative Law Judge David Cohen presided. Tiffany Daugherty, Esq. appeared on behalf of Petitioner. Also present on behalf of Petitioner was homeowner Terry E.

Wahrman. Neither Respondent nor an attorney on behalf of Respondent appeared at the hearing.

The hearing proceeded in Respondent's absence pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et. seq.*, and a default was granted on behalf of Petitioner pursuant to Section 78 of the APA.

§ 72(1) of the APA provides, in pertinent part:

If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

§ 78(2) of the APA provides, in pertinent part:

Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

As a result of the default, the factual allegations contained in Petitioner's Formal Complaint were deemed proven, and the exhibits attached to the formal complaint were accepted as part of the record.

EXHIBITS

The following specific exhibit was admitted:

<u>Exhibit</u>	<u>Description</u>
1	A copy of a Default Judgment against Respondent in the amount of \$9,140.00

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated MCL Sections 339.604(b), 339.604(c), 339.2411(2)(a), (c) & (l) of the Occupational Code, and 2006 AACRS, R 338.1551(2).

The relevant Sections state in pertinent part:

Section 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.

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:

(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.

R 338.1551(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. The licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a

complaint or a portion of the complaint is not acknowledged by the licensee as being justified, then the department shall notify the complainant of the area of disagreement.

FINDINGS OF FACT

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

1. Respondent, has, at all times relevant to this Complaint, been licensed as a residential builder under the Occupation Code, 1980 PA 299, as amended, Article 24: MCL 339.2401-2412.
2. A complaint against Respondent, conforming to the requirements of § 2411 of 1980 PA 299, as amended; MCL 339.2411 was filed with the Michigan Department of Energy, Labor & Economic Growth (Formal Complaint Exhibit 1).
3. Respondent entered into a contract to perform services regulated by 1980 PA 299, as amended, with M.A. Wahrman and Terry E. Wahrman on or about November 16, 2007 (Formal Complaint Exhibit 2).
4. On November 16, 2007, Terry E. Wahrman did pay Respondent the amount of \$1,723.00 by check (Formal Complaint Exhibit 3).
5. Respondent accepted and/or negotiated the check, but has not performed the services for which payment was accepted (Formal Complaint Exhibit 3).
6. Respondent failed 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*, MCL 339.604(b).
7. Respondent, has, without legal excuse, failed to perform the terms of the contract, contrary to MCL 339.2411(2)(a) (Formal Complaint Exhibit 2)
8. Respondent failed to account for money belonging to Terry E. Wahrman, contrary to MCL 339.2411(2)(c).
9. Respondent has failed to satisfy a judgment, contrary to MCL 339.2411(2)(l) (Formal Complaint Exhibit 4/Hearing Exhibit 1).
10. Respondent failed to respond to the Complaint attached as Exhibit 1 in a timely manner, contrary to 2006 AACCS, R 338.1551(2).

11. Respondent has violated a rule of conduct in practicing an occupation contrary to MCL 339.604(c).
12. Although Respondent was properly served with notice of these proceedings, he did not appear for the hearing.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 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. Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School Dist*, 428 Mich. 248 (1987). Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Sections 339.604(b), 339.604(c), 339.2411(2)(a), (c) & (l) of the Occupational Code, and 2006 AACRS, R 338.1551(2).

The Petitioner requested that Respondent's license be revoked until such time as restitution is made to Terry E. Wahrman in the amount of \$9,140.00. It should be noted that the same Respondent is alleged to have committed at least one other materially similar offense to another individual. This claim also resulted in a default taken on May 14, 2009 regarding Docket # 2009-604, Agency # 310225. As such, Respondent should not receive restitution of his license or issuance of a new license until all outstanding judgments against him are satisfied.

It should also be noted that counsel for Petitioner indicated at the May 14, 2009 Hearing that she had spoken to Respondent who was fully aware of the proceeding and that revocation of his license would be sought if he did not appear or otherwise resolve the matter by the hearing date.

RECOMMENDATIONS

This Administrative Law Judge makes the following recommendations to the

Board:

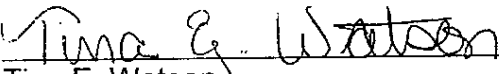
1. Respondent pay a civil fine in an amount deemed appropriate by the Board.
2. Respondent pay restitution to Terry E. Wahrman, in the amount of \$9,140.00.
3. Respondent's license should be revoked and no new or renewal licenses issued until restitution and civil fine are paid.



David Cohen
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 2nd day of June, 2009.



Tina E. Watson
State Office of Administrative Hearings and Rules

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