

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*
JOHN N. AND MICHELLE J. DEDECKER

Docket No. 2008-1683
Complaint No. 9012

Complainant,

v

OAK WOOD BUILDERS, INC.
BRIAN KEITH KASETA, QUALIFYING OFFICER (FEBRUARY 20, 2001 TO NOVEMBER
10, 2003)
SAMUEL T. MORCERI, QUALIFYING OFFICER (JUNE 15, 1999 TO FEBRUARY 19,
2001)
License No. 21-02-103073

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 May 22, 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 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).

1. Respondent shall pay a FINE in the amount of \$200.00. The fine is payable to the State of Michigan within 60 days from the mailing of this Final Order. Complaint No. 9012 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 \$1850.00 to John N. and Michelle J. Dedecker, by certified check made payable to John N. and Michelle J. Dedecker, and mailed to John N. and Michelle J. Dedecker, 6003 Chicago Road, Warren, MI 48092 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 REVOCATION of any and all Article 24 licenses held by Respondent or Respondent's Qualifying Officers. 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. The Qualifying Officers may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent or an individual Qualifying Officer is in suspended or revoked status.

4. It is the intent of the Board that both of the Qualifying Officers named in the caption shall be responsible for the fine and restitution. It is also the intent of the Board that the fine and restitution be assessed one time in order to satisfy the Final Order. If one of the Qualifying Officers satisfies the fine and/or restitution, the fine and/or restitution shall 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
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.	2008-1683
Bureau of Commercial Services, Petitioner	Agency No.	9012
v	Agency:	Bureau of Commercial Services
Oak Wood Builders, Inc. Brian Keith Kasetta, Qualifying Officer Samuel T. Mocerri, Qualifying Officer, Respondent	Case Type:	Sanction

Issued and entered
this 22nd day of May, 2009
by David Cohen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint and a subsequent First Amended Formal Complaint. The Amended Formal Complaint was issued April 1, 2003 against Oakwood Builders, Inc. (Oakwood), Brian Keith Kasetta, Qualifying Officer and Samuel T. Mocerri, Qualifying Officer (Respondent), by the Department of Consumer & Industry Services¹, Bureau of Commercial Services (Petitioner) alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.101, et seq.

¹ This entity has now evolved into the Department of Energy, Labor & Economic Growth (DELEG).

A Notice of Hearing (Notice) was issued July 10, 2008, scheduling a contested case hearing for February 4, 2009. On January 29, 2009, the Petitioner formally requested an adjournment, and this request was granted. A February 19, 2009 Order set the new Hearing date as April 22, 2009, and the hearing proceeded as scheduled. Administrative Law Judge David Cohen presided. Attorney William D. Wilhelm, Jr., Administrative Law Specialist appeared on behalf of Petitioner. Building Inspector Steve Sternicki also appeared at the Hearing on behalf of Petitioner, but did not offer formal testimony at the proceeding. Neither Respondent, nor anyone on behalf of the Respondent appeared at the hearing. All Notices were mailed to the address of record and to multiple other addresses of Respondent and/or its Qualifying Officers. Of note, the file in this matter contains a letter dated April 9, 2009 from Attorney Wilhelm, which indicates that Mr. Wilhelm personally spoke to Qualifying Officer Kasetta, informing him of the Hearing. At that time, Mr. Kasetta indicated a new address. As such, Mr. Wilhelm forwarded all materials relevant to the Hearing to the newly provided additional address of 26415 Campau, Harrison Township, Michigan. As this ALJ indicated at the Hearing, there is no doubt that Respondent's Qualifying Officer Kasetta had both legal and actual notice of the proceeding, but was not present for 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.* Petitioner requested a motion for default judgment against Respondent 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.

Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in Petitioner's Formal Complaint were deemed proven.

EXHIBITS

The following exhibits were admitted to the record at the request of Petitioner:

<u>Exhibit</u>	<u>Description</u>
1	Copy of Respondent's License Certification (Lapsed-Suspended Status).
2	Copy of Qualifying Officer Kasetta's License Certification (Active Status).
3	Copy of Documents pertaining to the Corporate Status of Respondent.
4	Copy of Residential Builder Salesperson License Status for Walter Drake (Lapsed-1988).
5	Copy of Contract and Payment between Homeowners and Respondent.
6	Copy of two Building Inspection Reports by Inspector Steve Sternicki.
7	Copy of an estimate for repairs still remaining at 6003 Chicago, Warren, Michigan; the subject property.

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondents violated Sections 604(c), 2411(2)(e), 2411(2)(j), and 2411(2)(m), of the Code, being MCL 339.604(c), MCL 339.2411(2)(e),(j), and (m). Respondents are also alleged to have violated Rules 51(4) and 51(5) of the Residential Builders Rules, 1979 AC, R 338.1551(4) & (5). These 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:

(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:

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

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

(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(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 338.1551(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. Respondent, Oak Wood Builders, Inc., Brian Kasetta, Qualifying Officer (all times subsequent to February 20, 2001), Samuel Mocerri, Qualifying Officer (June 15, 1999 – February 19, 2001) has at times relevant to this Complaint, been licensed as a residential builder under the Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412.
2. A Complaint against Respondent, conforming to the requirements of MCL 339.2411, was filed with the Department.
3. 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 evaluations of the Complaint submitted. (Exhibit 6).
4. On or about April 6, 1999, Walter Drake, on behalf of Respondent, entered into a contract to perform services regulated by 1980 PA 299, as amended, with Michele DeDecker.
5. At the time Walter Drake entered into the above-referenced contract, Walter Drake was not licensed (Exhibit 4).
6. Respondent accepted and performed a contract procured by a salesperson not licensed under Respondent.
7. Respondent has employed Walter Drake, a person unlicensed under 1980 PA 299, as amended, although required to be licensed pursuant to 1980 PS 299, *supra*, contrary to MCL 339.2411(2)(j).

8. Respondents failed to perform the requirements of the contract in a workmanlike manner, contrary to MCL 339.2411(2)(m).

9. Respondent in performance of the contract failed to comply with Sections 111.3, 113.3 and 116 of 1996 Building Officials and Code Administrators Code, which was adopted by the City of Warren, via Ordinance #80-528, Section 9-16, effective April 13, 1998, contrary to MCL 339.2411(2)(e).
10. Respondent, in performance of the contract, failed to comply with Sections 1504.1, 1507.4, 1507.4.3, 1508.1 and chapter 9 of the 1996 Building Officials and Code Administrators Code and Sections 903.6, 903.7, 903.1, 901.2, and Table 903.4 of the Counsel of American Building Officials code, which was adopted by the City of Warren, via Ordinance #80-528, Section 916, effective April 13, 1998, contrary to 1979 AC, R 338.1551(5).
11. Respondent failed to correct those items as justified by Exhibit 6 within a reasonable time, contrary to 1979 Ac, R 338.1551(4).
12. Respondents have violated a rule of conduct in practicing an occupation.
13. Respondent, through its Qualifying Officer Brian Kasetta, was provided actual and legal notice of these proceedings, but did not appear for the April 22, 2009 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 Respondents violated Sections 604(c), and 2411(2) (e), (j) and (m) of the Code, as well as Rule 51(4) and 51(5).

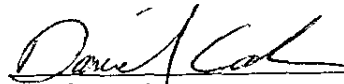
The long duration during which this matter was pending appears due to the *Lapsed-Suspended status of Respondent's license and discovery of a current license for its most recent Qualifying Officer, Brian Keith Kasetta (Exhibit 1 & 2).*

Petitioner requested restitution to the homeowners in this matter in the amount of \$1,850.00 (Exhibit 7)². Petitioner also requested that a fine of \$200.00 be assessed against Respondent and/or its still licensed Qualifying Officer. This ALJ would concur with these recommendations in this matter.

RECOMMENDATIONS

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

1. Respondent and/or its Qualifying Officers pay a civil fine in the amount of \$200.00 or an amount to be determined by the Board.
2. Respondent and or its Qualifying Officers pay restitution in the amount of \$1,850.00 to homeowners John & Michele DeDecker.
3. If the above-referenced restitution and fine are not paid within 60 days or a period of time deemed appropriate by the Board, Respondent and it Qualifying Officers licenses should be or remain suspended and no new licenses should be issued until the fine and restitution have been paid.

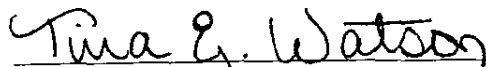


David Cohen
Administrative Law Judge

² It should be noted that the blue ink notation of Restitution/Repair Cost \$1,850.00, and cross off of the center paragraph of the estimate that constitutes Exhibit 7 were added by Petitioner prior to submitting the Exhibit.

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 22nd day of May, 2009.



Tina E. Watson

State Office of Administrative Hearings and Rules

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