

STATE OF MICHIGAN

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

In the matter of

Docket No. 2000-569

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-97-3247-00

v

**Agency: Bureau of Commercial
Services**

**Cheryl Ann Decker
dba Residential & Commercial
Builders,
Respondent**

Case Type: Sanction

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**Issued and entered
this 25th day of August, 2000
by Erick Williams
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuance of a Notice of Hearing dated February 23, 2000, scheduling a contested case hearing for May 23, 2000. The Notice of hearing was mailed to Respondent's last known address.

On June 6, 2000, an Order for Continuance was issued and entered by the presiding Administrative Law Judge rescheduling the matter to commence on August 8, 2000.

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Appearances: Hal Ziegler, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Cheryl Ann Decker d.b.a. Residential & Commercial Builders nor an attorney on behalf of Respondent appeared at the hearing.

The Notice of Hearing was issued pursuant to allegations by the Bureau of Commercial Services (Petitioner) that Cheryl Ann Decker d.b.a. Residential & Commercial Builders, (Respondent) violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.101 *et seq.*; MSA 18.425 *et seq.*, (Code).

The hearing in this matter commenced as scheduled on August 8, 2000. At the hearing, Mr. Ziegler requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.272; MSA 3.560 (272) (APA), and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

(1) 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.

Further, Section 78 of the APA states, in pertinent part:

B. Except as otherwise provided by law, disposition may be made of a contested case by...default....

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

During the August 8, 2000, hearing, several exhibits were accepted into the record. Those exhibits were:

Exhibit 1	Contract - top of page
Exhibit 2	Contract - bottom of page

During the August 8, 2000 hearing, no other evidence was offered into the record other than the exhibits. No witnesses testified at the hearing.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* (Code).

The specific issues in this case are whether or not the Respondent violated the following Sections of the Code and Rules: Section 2411(2)(d); Section 604(c) (Code); and 1979 AC R 338.1533(3) (Rule). Those Sections and Rules state in pertinent part:

Sec. 2411 Complaint; conduct subject to penalty; suspension or revocation of license; violation of §§ 338.3101 to 338.3319 or §§ 408.1057 to 408.1060f.

(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.

(d) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent

of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

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.

R. 338.1533(3) Changes in the agreement shall be in writing, dated and initialed by the parties to be bound.

FINDINGS OF FACT

Based on the record, I make the following findings of fact:

1. On or about August 30, 1996, Respondent entered into a contract with Mark and Jeanette Penny to perform services which were regulated by the Code.
2. Respondent, without the consent of Mark and Jeanette Penny, failed to complete the contract in accordance with the plans and specifications contemplated in the contract.
3. Respondent failed to reduce changes in the agreement to a writing, dated and initialed by the parties.
4. Respondent has, without legal excuse, failed to perform the terms of the contract.

5. Respondent violated a rule of conduct in practicing his occupation as a residential builder.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice, §60.48, at 230 (2d ed. 1994). The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 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, 406 NW2d 825 (1987). Based upon the facts described herein, the Petitioner has proven, by a preponderance of the evidence, that the Respondent violated the following Rules and Sections of the Code:

1. Respondent, without the consent of Mark and Jeanette Penny, failed to complete the contract in accordance with the plans and specifications contemplated in the contract in violation of Section 2411(2)(d) of the Code.
2. Respondent failed to reduce changes in the agreement to a writing, dated and initialed by the parties in violation of Rule 338.1533(3).
3. Respondent has, without legal excuse, failed to perform the terms of the contract in violation of Section 2411(2)(a) of the Code.

4. Respondent violated a rule of conduct in practicing his occupation as a residential builder in violation of Section 604(c) of the Code.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, the following recommendations are made by the Administrative Law Judge to the Board:

1. Restitution be ordered in the amount of \$1,228.00 to be paid to Mark and Jeanette Penny for the monies that have been tendered to Respondent.
2. Any and all licenses under the jurisdiction of the Code held by Respondent be suspended until such time as the restitution and fines have been paid in full.

Erick Williams
Administrative Law Judge