

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2000-741

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-99-5015-00

v

**Agency: Bureau of Commercial
Services**

**Talbot Builders, L.L.C.
Joseph H. Talbot, Q.O.,
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 March 21, 2000, scheduling a contested case hearing for May 24, 2000. The Notice of Hearing was mailed to Respondent's last known address.

Appearances: Kimball Smith, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Joseph Talbot, Q.O., Talbots Builders, L.L.C., 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 Talbot Builders, L.L.C., Joseph H. Talbot, Q.O., (Respondent) violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.2401-2412; MSA 18.425(2401)-(2412) (Code).

The hearing in this matter commenced as scheduled on May 24, 2000. At the hearing, Mr. Smith 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:

- (2) 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 May 24, 2000, hearing, several exhibits were accepted into the record. Those exhibits were:

Exhibit 1	Estimate by Sherrell's Excavating
Exhibit 2	Estimate by Wetosky Painting

Exhibit 3	Estimate by Wetosky Painting
Exhibit 4	Estimate by Wetosky Painting
Exhibit 5	Estimate by Contractors Wall Repair

During the May 24, 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)(m); Section 604(c); 1979 AC R 338.1551(2) (Rule); and 1979 AC R 338.1551(4) (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:

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

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 338.1551(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. He 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 acknowledges as justified shall be corrected within a reasonable time. If a complaint or a portion thereof is not acknowledges by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

R. 338.1551(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.

FINDINGS OF FACT

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

1. On or about February 18, 1998, Respondent entered into a contract with Charlene Schellhammer to perform services which were regulated by the Code.
2. Respondent failed to perform the requirements of the contract in a workmanlike manner.
3. Respondent failed to correct the problem in a timely manner.

4. Respondent failed to respond to the Complaint in a timely manner.
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 failed to perform the requirements of the contract with Charlene Schellhammer in a workmanlike manner violating Section 2411(2)(m) of the Code.
2. Respondent failed to correct the problem in a timely manner violating Rule 338.1551(4).
3. Respondent failed to respond to the Complaint in a timely manner violating Rule 338.1551(2).

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 \$6,078.80 to be paid to Charlene Schellhammer for the monies that have been tendered to Respondent.
2. Based upon the above violations of the Code and Rules, a civil fine in the amount of \$2,000.00 be assessed against Respondent.
3. 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