

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

In the matter of

Docket No. 2001-1286

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-6588-00

v

Agency: Bureau of Commercial Services

**James I. Graham,
d/b/a Mid-State Construction &
Contracting,
Respondent**

Case Type: Sanction

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**Issued and entered
this 20th day of September, 2001
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Michael Homier, Attorney at Law, appeared on behalf of the Petitioner, Bureau of Commercial Services. Neither Respondent, James I. Graham, nor an attorney on behalf of Respondent, appeared at the hearing.

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint, dated May 7, 2001. The Notice of Hearing was mailed to Respondent's last known address on July 31, 2001. The Notice informed Respondent that failure to appear at a scheduled hearing may result in a default being entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, 1969 PA 306, as

amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.* (APA). The hearing in this matter was held on September 17, 2001.

According to Petitioner's counsel, Respondent called the Bureau of Hearings on the day of the hearing and said he could not attend because he was "sick." He did not specify the nature of his illness and he did not submit a written request for adjournment. Petitioner's counsel asked to be allowed to proceed in Respondent's absence pursuant to Section 72 of the APA, and that a default be granted on behalf of 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 Judge granted the Petitioner's motion for default. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The Formal Complaint discloses that Respondent was licensed as a residential builder under the Occupational Code, 1980 PA 299, as amended; MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* (the Code).

The Complaint further discloses that Respondent entered into a contract to

perform residential builder's services with Randy and Susan Castro on April 25, 2000. The Complaint alleges that Respondent failed to perform the requirements of the contract in a workmanlike manner, contrary to Section 2411(2)(m) of the Code. The Complaint further alleges that Respondent's performance under the contract failed to comply with the local building code, contrary to 1979 AC, R 338.1551(5). The Complaint avers that Respondent failed to correct his defective workmanship, contrary to 1979 AC, R 338.1551(4). The Complaint also avers that Respondent, without legal excuse, failed to perform all the terms of the contract, contrary to Section 2411(2)(a) of the Code. The Complaint discloses that on April 20, 2001, a judgment in the amount of \$2,686.72 plus interest, was entered against Respondent in 64-A Michigan District Court and that Respondent failed to satisfy the judgment, contrary to Section 2411(2)(l) of the Code. The Complaint asserts that Respondent has failed to pay money owed to subcontractors, contrary to Section 2411(2)(c) of the Code. The Complaint also alleges that Respondent published an advertisement in the Ionia, Michigan newspaper which failed to disclose an address, contrary to 1979 AC, R 338.1532. The Complaint alleges that Respondent failed to respond to the complaint in a timely manner, contrary to 1979 AC, R 338.1551(2). The last substantive count in the Complaint asserts that Respondent violated a rule of conduct in practicing his occupation, contrary to Section 604(c) of the Code.

FINDINGS OF FACT

Based upon the foregoing, I make the following findings of fact.

- (1) Respondent is licensed as a residential builder under the Code.
- (2) On April 25, 2000, Respondent entered into a contract to perform residential builder's services.
- (3) Respondent failed to perform the requirements of the contract in a workmanlike manner.
- (4) Respondent, in performing under the contract, failed to comply with the local building code.
- (5) Respondent failed to correct his defective workmanship within a reasonable time.
- (6) Respondent, without legal excuse, failed to perform all the terms of the contract.
- (7) On April 20, 2001 a judgment in the amount of \$2,686.72, plus interest was entered against Respondent in 64-A Judicial District Court and Respondent has failed to satisfy the judgment.
- (8) Respondent has failed to pay money to subcontractors.
- (9) Respondent published an advertisement in the Ionia, Michigan newspaper which did not include an address.
- (10) Respondent failed to respond to the complaint in a timely manner.
- (11) Respondent violated a rule of conduct in practicing his occupation.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative

hearings 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, page 230.

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 District, 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 Sections 604(c), 2411(2)(a), 2411(2)(c), 2411(2)(l), 2411(2)(m) of the Code and Rules 338.1532, 338.1551(2), (4) and (5).

RECOMMENDED SANCTION

At the hearing Petitioner introduced Exhibit 1, the complainant's itemized list of losses due to Respondent's misconduct which totals \$11,522.74. Petitioner also introduced Exhibit 2, a \$325.00 bill to temporarily fix a roof leak caused by Respondent's misconduct. Exhibit 2 is included within the Exhibit 1 total of \$11,522.74. I recommend that Respondent be ordered to pay restitution to the complainant in the amount of \$11,522.74 and that a \$2,000.00 civil fine be imposed on Respondent.

James L. Karpen
Administrative Law Judge