

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

In the matter of:

**Bureau of Commercial Services,
Petitioner**

Docket No. 2001-1322

Agency No. 89-01-1801-00

**v
R. L. Thompson Co.,
Tedd B. Thompson, Q.O.,
Respondent**

Agency Name: Bureau of Commercial Services

Case Type: Sanction

_____ /

**Issued and entered
this 20th day of November, 2001
by Stephen B. Goldstein
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter was properly noticed for a hearing to commence at 9:00 A.M. on September 14, 2001 in the hearing rooms of the Michigan Department of Consumer and Industry Services, Bureau of Hearings, 2501 Woodlake Circle, 1st Floor, Okemos, Michigan.

Stephen B. Goldstein presided as Administrative Law Judge.

Mr. Michael Homier, Attorney at Law, appeared on behalf of the Bureau of Commercial Services (Petitioner).

Neither Tedd B. Thompson (Respondent), nor an attorney on Respondent's behalf appeared at the hearing.

This matter commenced with the filing by the Petitioner of a Formal Complaint dated May 7, 2001 (Complaint) alleging violations by Respondent of Michigan's Occupational Code, 1980 PA 299, as amended (Code).

The original Notice of Hearing dated August 2, 2001 scheduled this matter for a contested case hearing to commence on September 14, 2001 at 9:00 A.M. Furthermore, the Notice informed Respondent that if Respondent failed to appear at the hearing as scheduled, a Default Judgment may be entered pursuant to Section 78 of the Administrative Procedures Act of 1969, as amended (APA), being MCL 24.201, et seq.; MSA 3.560 (101), et seq.

The September 14, 2001 hearing commenced as scheduled. A representative appeared at this hearing on behalf of Petitioner. However, neither Respondent nor an attorney on behalf of Respondent appeared at this hearing.

At the outset of the contested case hearing, Mr. Homier requested that Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the APA. In addition, Mr. Homier requested 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 as follows:

“(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 determined that Petitioner should be allowed to proceed in Respondent's absence, and therefore granted Petitioner's motion for a Default Judgment.

SUMMARY OF EXHIBITS

Petitioner Exhibit 1 - Litigation Cost Report reflecting a date claim paid of August 16, 2000.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether Respondent violated the Code.

The specific issue is whether Respondent violated MCL 339.2411(2)(c); MSA 18.425(2411)(2)(c) and MCL 339.2411(3); MSA 18.425(2411)(3). Those Sections provide as follows:

“Sec. 2411. (1) * * *”

“(2) A licensee or applicant who commits 1 or more of the following shall be subject to the penalties set forth in article 6:

“(c) Failure to account for or remit money coming into the person's possession which belongs to others.”

“ * * *”

“(3) The department shall suspend or revoke the license of a person licensed under this article whose failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, Act No. 497 of the Public Acts of 1980, being sections 570.1101 to 570.1305 of the Michigan Compiled Laws, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, Act No. 217 of the Public Acts of 1956, as amended, being sections

338.881 to 338.892 of the Michigan Compiled Laws; or under Act No. 266 of the Public Acts of 1929, as amended, being sections 338.901 to 338.917 of the Michigan Compiled Laws.

The license shall not be renewed nor shall a new license be issued until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being section 600.6013 of the Michigan Compiled Laws.”

FINDINGS OF FACT

Respondent was properly served with the Notice of Hearing but did not appear at the time and place scheduled for the hearing. As a result, Respondent was found in default under Section 78(2) of the APA.

Based upon the granting of the Default Judgment, the following facts are found:

1. That, at all times relevant to this Complaint, Respondent was licensed as a residential builder under the Code, except as to those events which occurred after January 2, 2000, at which time the license was suspended and was subsequently revoked on February 14, 2001.
2. That, on the 16th day of August, 2000, as a result of Respondent's failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien Recovery Fund in the amount of \$6,000.00 to Carolina Holdings Midwest, LLC, conducting business as Erb Lumber, contrary to MCL 339.2411(3); MSA 18.425(2411)(3).
3. That the facts underlying said payment arose out of and in connection with the performance of Respondent's duties as a licensed residential builder and/or residential maintenance and alteration contractor.
4. That Respondent failed to remit money which

belonged to Michael J. and Karen M. Pavilick and Steven R. and Mary A. Stier to Carolina Holdings Midwest, LLC, conducting business as Erb Lumber, contrary to MCL 339.2411(2)(c); MSA 18.425(2411)(2)(c).

CONCLUSIONS OF LAW

The principles that govern judicial proceedings apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice, 2nd Ed, Section 60.48, p. 280. The burden of proof is upon the State to prove, by a preponderance of the evidence, that Respondent violated the Code. American Way Service Corporation v Commissioner of Insurance, 113 Mich App 423 (1982). Under Section 72 of the APA, there is no requirement to provide a hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248 (1987).

Having granted a Default Judgment on behalf of Petitioner, it is concluded that the above acts establish that Respondent has violated MCL 339.2411(2)(c); MSA 18.425(2411)(2)(c) and MCL 339.2411(3); MSA 18.425(2411)(3). Accordingly, Petitioner has established, by a preponderance of the evidence, that Respondent has violated the above Sections of the Code and Rule as alleged in its complaint.

RECOMMENDED SANCTIONS

Based upon Respondent's violations of the Code and Rule, it is recommended that Respondent be assessed the following sanctions:

1. **Imposition of a Civil Fine in the amount of \$2,500.00.**
2. **Respondent be ordered to pay restitution to the**

Homeowner Construction Lien Recovery Fund in the amount of \$8,061.50.

3. Any and all licenses held by Respondent in either an individual or corporate capacity should be revoked. In addition, no new licenses should be issued in either an individual or corporate capacity until both the fine and restitution are paid in full.

STEPHEN B. GOLDSTEIN
ADMINISTRATIVE LAW JUDGE