

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

In the matter of

Docket No. 2000-1748

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-4575-00

v

**Agency: Bureau of Commercial
Services**

**Empire Builders of Michigan, Inc.
Sameer B. Patel, Q.O.,
Respondent**

Case Type: Sanction

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**Issued and entered
this 29th day of November, 2001
by Robert H. Mourning
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuance of a Notice of Hearing dated October 8, 2001, scheduling a contested case hearing for November 19, 2001. The Notice of Hearing was mailed to Respondent's last known address.

Tracey Hampton appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Sameer B. Patel, Q.O., Empire Builders of Michigan, Inc., nor an attorney on behalf of the Respondent appeared at the hearing.

The Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent violated the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.2401-2412; MSA 18.425(2401)-(2412).

The hearing in this matter was held on November 19, 2001. At the hearing, Attorney Hampton 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 (172) (APA), and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72(1) 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(2) 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. In reviewing the Formal Complaint, the Administrative Law Judge found that the allegations in paragraphs 10, 11, and 12 do not conform to the evidence admitted in Exhibits 1 and 2. Therefore, the Administrative Law Judge has amended paragraphs 10, 11, and 12 of the Formal Complaint to conform with the Petitioner's proofs. As a result of the default, the factual allegations contained in the Petitioner's Amended Formal Complaint are deemed true.

No witnesses testified at the hearing. The Petitioner offered the following exhibits which were admitted into the record:

Exhibit 1: Claim of Lien from Bowers Plumbing & Heating, Inc.,
July 20, 1998.

Exhibit 2: Claim of Lien from Fingerle Lumber Co., July 20, 1998.

ISSUES AND APPLICABLE LAW

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

The specific issues in this case are whether or not the Respondent violated the following Sections of the Code and Rules: Section 604(c) and (g); Section 2411(2)(c), (e), (l) and (m); and 1979 AC R 338.1551(4) and (5). Those Sections and Rules state in pertinent part:

Section 2411(2)(c), (e), (l) and (m) provides that:

(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.

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

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

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

Section 604 (c) and (g) provides that :

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.

(g) Commits an act which demonstrates incompetence.

Rule 51(4) and (5) provides that:

(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.

(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

1. On or about January 8, 1998, the Respondent entered into a purchase agreement with Rasmy E. Talaat for the sale of a residential structure which is regulated by the Code.

2. The Respondent failed to construct the residential structure in a workmanlike manner.

3. The Respondent, in construction of the residential structure, failed to comply with certain provisions of the 1996 Building Officials & Code Administrators (BOCA) Code, which was adopted by the Charter Township of Pittsfield, effective October 31, 1996.

4. The Respondent failed to correct certain items within a reasonable time.

5. The Respondent failed to meet minimal standards of acceptable practice for the Respondent's occupation as a residential builder.

6. The Respondent failed to satisfy liens filed on July 20, 1998, by Fingerle Lumber, Co., and Bowers Plumbing & Heating, Inc., and on March 16, 1999, by Erb Lumber, Inc., for residential property located at 4878 Lohr Road, Ann Arbor, Michigan.

7. The Respondent failed to pay money to subcontractors and/or materialmen with whom the Respondent had contracted to perform the services required by the contract.

8. The Respondent has violated a rule of conduct in practicing an occupation.

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. The Respondent has failed to construct the residential structure in a workmanlike manner, violating Section 2411(2)(m) of the Code.

2. The Respondent, in construction of the residential structure, failed to comply with certain provisions of the 1996 BOCA Code, which was adopted by the Charter Township of Pittsfield, effective October 31, 1996, violating Section 2411(2)(e) of the Code and R 338.1551(5).

3. The Respondent failed to correct certain items within a reasonable time, violating R 338.1551(4).

4. The Respondent failed to meet minimal standards of acceptable practice for the Respondent's occupation as a residential builder, violating Section 604(g) of the Code.

5. The Respondent failed to satisfy liens filed on July 20, 1998, by Fingerle Lumber, Co., and Bowers Plumbing & Heating, Inc., and on March 16, 1999, by Erb Lumber, Inc., for residential property located at 4878 Lohr Road, Ann Arbor, Michigan, violating Section 2411(2)(1) of the Code.

6. The Respondent has failed to pay money to subcontractors and/or materialmen with whom the Respondent has contracted to perform the services required by the contract, violating Section 2411(2)(c) of the Code.

7. The Respondent has violated a rule of conduct in practicing an occupation, violating Section 604(c) of the Code.

RECOMMENDATIONS

The Administrative Law Judge recommends the following sanctions:

1. The Respondent be assessed a civil fine in the amount of \$10,000.00.
2. In the event that the civil fine has not been paid within 60 days following the issuance of a final order by the Board, the Respondent's Article 24 licenses should be suspended. No Article 24 license shall be renewed nor shall any new Article 24 license be issued until the civil fine is paid in full.

Robert H. Mourning
Administrative Law Judge