

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

In the matter of

Docket No. 2001-1917

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-01-0616-00

v

**Agency: Bureau of Commercial
Services**

**Kevin Garrel Humbles
dba Hum Construction,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 6th day of March, 2002
by C. David Jones
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a formal complaint against Respondent on July 30, 2001.

On or about November 20, 2001, a Notice of Hearing was properly served on Respondent, at the address he last provided the Department, and on Petitioner scheduling the hearing to commence on January 4, 2002, at 9:00 a.m. at 2501 Woodlake Circle, Okemos, Michigan.

Petitioner appeared at hearing by Attorney Michael Homier. Respondent did not appear. No adjournment was granted.

At the hearing Mr. Homier requested that the Petitioner be allowed to proceed in Respondent's absence, and a default be granted on behalf of Petitioner pursuant to the following provisions of the Administrative Procedures Act:

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.

MCL 24.272(1); MSA 38.560(172)(1); APA Section 72(1)

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

MCL 24.278(2); MSA 38.560(178)(2); APA Section 78(2)

Petitioner's motion for default was granted. As a result of the default the factual allegations contained in the formal complaint were deemed true.

The following exhibit offered by Petitioner was admitted into the record: Petitioner's Exhibit 1, estimate for repair.

Petitioner presented no witnesses to testify.

ISSUES AND APPLICABLE LAW

The applicable law in this case is the Occupational Code, 1980 PA 299 as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*; and 1979 AC, R 338.1511-1553 (Occupational Rules).

The issues in this case are as follows:

1. Did Respondent fail to perform the requirements of the contract in a workmanlike manner contrary to Occupational Code Section 2411(2)(m)?

2. Did Respondent fail to correct items justified by the inspector within a reasonable time contrary to Occupational Rule 51(4)?
3. Did Respondent without legal excuse fail to perform the terms of the contract contrary to Occupational Code Section 2411(2)(a)?
4. Did Respondent fail to satisfy a judgement against him contrary to Occupational Code Section 2411(2)(l)?
5. Did Respondent violate a rule of conduct contrary to Occupational Code Section 604(c)?
6. What are the appropriate penalties for the violations?

FINDINGS OF FACT

1. Kevin Garrel Humbles d/b/a H.U.M. Construction (Respondent) has at all times relevant to this complaint been licensed as a residential builder under the Occupational Code, 1980 PA 299 as amended, Article 24; MCL 339.2401-2412; MSA 18.425(2401-2412).
2. The complaint against Respondent conforming to the requirements of Section 2411 of 1980 PA 299 as amended; MCL 339.2411; MSA 18.425(2411) has been filed with the Michigan Department of Consumer and Industry Services.
3. An authority charged for the enforcement of the laws governing construction of residential or residential and commercial buildings in the political subdivision in which the building is located, has submitted an evaluation of the complaint.

4. Respondent entered into a contract to perform services regulated by 1980 PA 299, as amended, with Brenda Davis on or about April 21, 2000.

5. Respondent has failed to perform the requirements of the contract in a workmanlike manner.

6. Respondent failed to correct those items as justified by the inspector's report within a reasonable time.

7. Respondent has without legal excuse failed to perform the terms of the contract.

8. Respondent on December 11, 2000, had a judgement entered against him in the State of Michigan, 5th Judicial District Court, in the case of Brenda Davis v Kevin Humble in the amount of \$3,049.95 plus interest.

9. Respondent has failed to satisfy the judgement, contrary to MCL 339.2411(2)(l); MSA 18.425(2411)(2)(l).

10. Respondent has violated the rule of conduct in practicing an occupation.

11. The complaint was processed in all respects in conformity with the requirements of all applicable statutes and rules including but not limited to the Administrative Procedures Act.

12. The necessary and reasonable cost of repair is \$4,200.

A. Failure to Correct

Petitioner accused Respondent of violating the following:

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

MCL 339.2411(2)(m); MSA 18.425(2411)(2)(m); Occupational Code Section 2411(2)(m)

Because of the default this violation is established.

B. Failure to Correct

Petitioner accused Respondent of violating the following:

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. . .

1979 AC, R 338.1551(4); Occupational Rule 51(4)

Because of the default this violation is established.

C. Abandonment

Petitioner accused Respondent of violating the following:

Abandonment without legal excuse of a contract, construction project, or operating, engaging or undertaking by the licensee.

MCL 339.2411(2)(a); MSA 18.425(2)(a); Occupational Code Section 2411(2)(a)

Because of the default this violation is established.

D. Failing to Satisfy Judgement

Petitioner accused Respondent of violating the following:

. . .failing to satisfy judgements or liens. . .

MCL 339.2411(2)(l); MSA 18.425(2411)(2)(l); Occupational Code Section 2411(2)(l)

Because of the default this violation is established.

E. Violating a Rule of Conduct

Petitioner accused Respondent of the following:

Violates a rule of conduct of an occupation.

MCL 339.604(c); MSA 18.425(604)(c); Occupational Code Section 604(c)

Because of the default this violation is established.

F. Penalties

The law provides that a person who has violated the Occupational Code or rule shall be assessed one or more of certain penalties including suspension, revocation, civil fine not exceeding \$10,000, censure, probation, and restitution. MCL 339.602; MSA 18.425(620); Occupational Code Section 602.

I agree with Petitioner's recommendations on penalties. Respondent had a significant number of violations. Respondent should be fined \$2,000 and pay restitution of \$4,200 (for the actual cost of repairs for Petitioner's Exhibit 1.

DECISION AND RECOMMENDED PENALTIES

Based on the above Findings of Fact and Conclusions of Law the undersigned Administrative Law Judge decides as follows:

1. Respondent failed to perform the requirements of a contract in a workmanlike manner contrary to Occupational Code Section 2411(2)(m).
2. Respondent failed to correct items justified by the inspector within a reasonable time contrary to Occupational Rule 51(4).
3. Respondent without legal excuse failed to perform the terms of the contract contrary to Occupational Code Section 2411(2)(a).
4. Respondent failed to satisfy a judgement against him contrary to Occupational Code Section 2411(2)(l).
5. Respondent violated a rule of conduct contrary to Occupational Code Section 604(c).

The undersigned Administrative Law Judge recommends the following penalties:

1. Respondent shall pay the homeowner restitution in the amount of \$4,200.
2. Respondent shall pay a civil fine to the Department in the amount of \$2,000.
3. Any and all licenses under the jurisdiction of the Code held by Respondent shall be suspended until such time as Respondent has paid in full the restitution

and fines.

C. David Jones
Administrative Law Judge