

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

In the matter of

Docket No. 2001-481

Bureau of Commercial Services,
Petitioner

Agency No. 21-00-2104-00

v

Ronald M. Siminski,
Respondent

Agency: Bureau of Commercial
Services

Case Type: Sanction

Issued and entered
this 7th day of May, 2002
by Renee A. Ozburn
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with a Notice of Hearing (Notice) upon a Formal Complaint (Complaint) dated December 28, 2000, alleging that Ronald M. Siminski (Respondent), violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* (Code).

A hearing was held in this matter on March 6, 2002, in hearing rooms of the Department of Consumer and Industry Services, Bureau of Hearings (Department), located in Lansing, Michigan.

Mr. Hal Ziegler appeared on behalf of the Bureau of Commercial Services (BCS). Ronald Siminski represented himself.

ISSUES AND APPLICABLE LAW

The Complaint in this matter alleges that Respondent violated Code Sections 604(c) and 2411(2)(a) and (m), and rule 51(5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder, being 1979 AC R 338.1551(5), which provide as follows:

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.

1211(2) - A licensee or applicant who commits 1 or more of the following shall be subject to the penalties set forth in article 6:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

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

Rule 51(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.

SUMMARY OF EXHIBITS

Petitioner's Exhibits:

Exhibit 1 - Building Inspection Report

Exhibit 2 - Contract

Exhibit 3 - Canceled checks

Exhibit 4 - Letter dated 12/1/99

Exhibit 5 - Canceled checks

Exhibit 6 - Letter dated 1/5/00

Exhibit 7 - Invoice

FINDINGS OF FACT

1. At all times relevant to the Complaint in this matter, the Respondent was licensed as a residential builder under the Code.

2. On or about September 25, 1999, the Respondent entered into a contract (Exhibit 2) with Christina Holz and William Schele, to complete the framing of a new home located in Potterville, Michigan. Pursuant to the contract, the Respondent agreed to commence construction immediately and complete the following items within "45 days, subject only to delay caused by circumstances beyond the control of BUILDER:"

1. Sub Floor
2. Log Erection
3. Gang Studs & Settling Jacks & T-Jambs
4. Second Floor Joists & Girders
5. Second Floor Sheeting (Sub Floors Only)
6. Roof Framing
7. Roof First Sheeting
8. Roof Insulation
9. Roof Second Sheeting
10. Porches & Decks (No Rails)
11. Install Windows (No Trapezoids or Raw Glass Installed)
12. Exterior Doors
13. 4x Interior Wall Starters

Paragraph 3 of the contract states:

In the event BUILDER fails to make the performance required under the terms of this Agreement as and when required, upon fifteen (15) days prior written notice OWNER shall have the right to procure the required performance from third parties at the cost and expense of BUILDER.

The contract contains the following payment schedule:

\$6,000 upon arrival at job site
\$6,000 upon completion of items 1-6
\$5,000 upon completion of items 7-13

3. The Respondent started work on or about October 3, 1999. As of December 7, 1999, the homeowners had paid the Respondent \$12,000 of the \$17,000 contract price (Exhibits 3 and 5).

4. At some point in December 1999, the Respondent stopped showing up to work on the home, although his laborers were sometimes present. When Ms. Holz spoke with the Respondent, he indicated that he needed more money for gas and to pay his laborers. Subsequently, his laborers indicated they would not be back because they were not being paid. When Ms. Holz offered to pay the laborers directly, the Respondent agreed but never showed up to change the contract. Ms. Holz testified that the Respondent provided only a cell phone number for purposes of reaching him. At some point in the process of trying to get the work completed, the cell phone number was disconnected.

5. Eaton County Building Inspector Bruce Dittmer conducted a normal 'walk through' framing inspection on January 20, 2000. This inspection was not in

response to any complaint. Inspector Dittmer noted that the home was “still under construction” when he made his observations in January 2000. At that time, he found a number of framing tasks that had not been completed. Exhibit 1 is a Building Inspection Report (Report) completed by Inspector Dittmer in August 2000, after a complaint was filed by the homeowners. Inspector Dittmer used his findings from the January 2000 inspection to complete the Report because he was informed that no further work had been performed by the Respondent subsequent to January 2000. In August 2000, Inspector Dittmer was aware that the homeowners had hired other contractors to complete and/or correct the problems he noted in his January 2000 inspection. Inspector Dittmer acknowledges that he did not send a copy of his findings to the Respondent after the January 2000 walk through inspection because Ms. Holz was the permit holder, and all inspection findings (that are not generated by a complaint) go to the permit holder.

6. As of January 2000, the items Inspector Dittmer found to be incomplete or insufficient for purposes of Code were as follows:

- a) Sill straps not nailed properly
- b) Porch columns (several) and main beam columns not supported properly
- c) Blocking under point -loads not complete
- d) Insufficient bearing for some joists
- e) Back porch carrier insufficient
- f) Draft stopping not installed

- g) Collar ties not installed

In addition to the above Code citations, Inspector Dittmer's Report indicated workmanship problems with the following:

- h) Center ridge post framing had settled
- i) Stairs only partially framed
- j) Screw jacks not all installed

Inspector Dittmer found that the settling of the ridge posts was a workmanship problem because the studs had slipped sideways at the top of the interior walls. The studs had slipped because they were not fastened properly. Local building codes require the proper fastening of studs. Further, the settling was not due to any shrinkage of the logs themselves, which is expected in log homes. In fact, there were no logs in the area of the settling.

7. In correspondence dated December 1, 1999, (Exhibit 4), the homeowners reminded the Respondent that the 45 days for completion of the contract had run without the job being finished. The letter indicates that the Respondent had not informed them of any circumstances beyond his control that would justify the delay. The homeowners granted a 15-day extension to December 16, 1999. The letter indicates that as of December 1, 1999, there was a balance of \$8,000 owing on the contract. Exhibit 3 indicates that the homeowners forwarded another \$3,000 to the Respondent on December 7, 1999.

8. By correspondence dated January 5, 2000, (Exhibit 6), the Respondent indicated that he was having trouble paying the roofing contractor and laborers. He stated, "The problem with not completing misc. items and the porch is I have run out of funds 3 weeks ago." He suggests that the homeowners try working with their financing agency to get more money. Although the homeowners had paid the Respondent \$12,000 as of January 5, 2000, and were not obligated to pay the remaining \$5,000 until the project was completed, the Respondent's letter indicated that he might file a construction lien on the property if the homeowners do not pay him more money than was due on the contract at that time. The Respondent never attempted to amend the written contract.

9. The Respondent testified that he last spoke to the homeowners between January 7th and January 10th, at which time he understood them to definitively state that they did not want him to complete the job. However, the Respondent failed to present any credible, or legal, excuse for not completing the project during the month of December. As of December 7, 1999, the homeowners had paid all of the money they were contractually obligated to pay, prior to completion. Further, in the December 1, 1999, letter from the homeowners to the Respondent, they had put him on notice that they would be exercising the clause in the contract that allowed them to hire another contractor, at Respondent's expense, if he did not complete the contract by December 16, 1999.

10. The Respondent acknowledged that he did not complete the first "4 or 5" items on the list. He contends that he was waiting for the roof to be completed before

finishing those items, and the roof was not completed within the 45-day time constraints of the contract. Further, he asserts that the rear deck concrete pad where the post would sit could not be put in place within the contract time frames because the concrete had not been poured until late November. However, the Respondent failed to adequately communicate with the homeowners about problems that would continue to delay his work. The Respondent also failed to amend the written contract to address issues of delays or money.

11. Although Inspector Dittmer acknowledged that the items he cited in his walk through inspection on January 20, 2000, could have been completed and/or corrected by the Respondent, the evidence does not support the Respondent's assertions that he was not allowed to complete his work because the homeowners prematurely terminated his contract. The homeowners gave credible testimony regarding their unsuccessful attempts to get the Respondent to complete the job prior to him dropping off blueprints at their home sometime in early January 2000.

12. The homeowners operated within the terms of the contract by hiring another contractor to finish the work that Respondent failed to complete. Exhibit 7 is an invoice detailing the work done by contractor William Allen d/b/a Wolverine Construction to finish and correct the framing work. The total price of the work was \$15,000. The invoice indicates this total was paid. Exhibit 5 contains two canceled checks to Mr. Allen dated February 1, 2000, and March 8, 2000, totaling \$10,000. Ms. Holz testified that she also gave Mr. Allen \$5,000 in cash.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that Respondent violated the code as alleged, and that grounds exist for imposing sanctions.

The above Findings of Fact establish, by a preponderance of the evidence, that the Respondent failed to complete the terms of the contract, failed to perform certain requirements of the contract in a workmanlike manner, and failed to comply with local building codes during construction. **Therefore, the Respondent has violated Code Sections 2411(2)(a) and (m) and Rule 51(5). The violation of Rule 51(5) also constitutes a violation of Section 604(c).**

RECOMMENDED SANCTION

Petitioner recommends, and the undersigned Administrative Law Judge concurs, that the Respondent should be ordered to pay restitution to the homeowners in the amount of \$15,000.

**Renee A. Ozburn
Administrative Law Judge**