

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

In the matter of

Docket No. 2001-496

**Bureau of Commercial Services,
Petitioner**

Agency No. 89-00-6356-00

v

**Agency: Bureau of Commercial
Services**

**Frank Bowler,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 22nd day of June, 2001
by Gregory Holiday
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the issuance of a Notice of Hearing upon a Formal Complaint dated December 21, 2000. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.* (APA), Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing. The Notice of Hearing scheduled the contested case to commence on Wednesday, May 30, 2001 at 9:30 a.m. at the Bureau of Hearings of the Department of Consumer and Industry Services, 1200 Sixth Street, Eighth Floor, Detroit, Michigan. Further, the notice informed Respondent that if Respondent failed to appear at the hearing as scheduled, a default may be entered pursuant

to Section 78 of the APA. The hearing commenced at about 1:40 p.m. Gregory Holiday presided as Administrative Law Judge. Larry R. Jensen, Esq., appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Consumer and Industry Services (Petitioner). Neither Frank Bowler (Respondent) nor anyone on Respondent's behalf appeared for the hearing.

At the outset of the contested case, it was requested that a default be entered on behalf of Petitioner pursuant to Section 78 of the APA. Section 78 of the APA provides, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested cases by...default..."

The judge granted Petitioner's motion for a default. As a result of the default, the factual allegations contained in Petitioner's Formal Complaint were deemed true.

ISSUES AND APPLICABLE LAW

The general issue presented is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*, with respect to the practice of a residential builder. The specific issues are whether or not Respondent violated Sections 2411(2)(c) and 2411(3) of the Code, which provide in pertinent part:

Sec. 2411...(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.

Sec. 2411... (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.

Petitioner offered the following exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Litigation Cost Report in HCLRF Record 1710 for \$700.00
2	10/9/00 Consent Judgment and Dismissal of Case for \$2,500.00 in favor of Custom Drywall, Inc., in the Oakland County Circuit Court Pursuant to Mediation Award

FINDINGS OF FACT

1. Respondent has, at all relevant times, been licensed as a residential builder under the Code.

2. On November 1, 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 (Fund) in the amount of \$2,500.00 to Custom Drywall, Inc. (See Petitioner Exhibit 2). The Fund incurred litigation costs in the amount of \$700.00 in connection with the claim filed by Custom Drywall, Inc. (See Petitioner Exhibit 1).

3. The facts underlying the 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. Respondent failed to remit money which belonged to Walter and Judy Frantz to Custom Drywall, Inc.

5. Respondent failed to account for money which belonged to Walter and Judy Frantz.

6. Respondent was properly served with notice of this proceeding but did not appear for the hearing.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) § 60.48, page 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent. 1990 AACRS, R 339.1763. Under

Section 72 of the APA, there is no need 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, Petitioner has established that Respondent violated Sections 2411(2)(c) and 2411(3) of the Code, as described in the Formal Complaint.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent has violated Sections 2411(2)(c) and 2411(3) of the Code, subjecting Respondent to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include repayment to the Fund of the amount of the judgment, plus litigation costs and interest, and suspension of all Article 24 licenses until the Fund has been repaid in full.

It is recommended that the Board include the following as sanctions in this matter:

1. Payment of restitution to the Homeowner Construction Lien Recovery Fund in the amount of \$3,200.00 plus interest, representing the \$2,500.00 judgment paid to Custom Drywall, Inc., litigation costs of \$700.00 and interest.
2. Under Section 2411(3) of the Code, Respondent's Article 24 license(s) must be suspended or revoked until the Fund has been repaid in full.

Gregory Holiday

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