

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

In the matter of

Docket No. 2001-947

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-1545-00

v

Agency: Bureau of Commercial Services

**James Edward Campbell
d/b/a Jim Campbell Construction,
Respondent**

Case Type: Sanction

**Issued and entered
this 24th day of September, 2001
by Lauren G. Van Steel
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracy Hampton appeared on behalf of Respondent Bureau of Commercial Services. Neither Respondent James Edward Campbell d/b/a Jim Campbell Construction, nor an attorney or representative on behalf of Respondent, appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated June 13, 2001, scheduling a hearing for August 1, 2001. The Notice of Hearing was mailed to the parties' last known addresses. Further, the Notice of Hearing informed the parties that if either party failed to appear at the scheduled hearing, a default judgment might be entered pursuant to Sections 72 and 78 of the Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.* (APA).

The Notice of Hearing was issued pursuant to a Formal Complaint filed on February 16, 2001, which alleged noncompliance with the Michigan Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* (Code), specifically Sections 2411(2)(c) and (l); and 604(c), and Administrative Rule 51(2) of the Residential Builders and Maintenance and Alteration Contractor Board Rules, being 1979 AC, R 338.1551(2).

At the hearing held on August 1, 2001, Petitioner's representative requested to be allowed to proceed in Respondent's absence pursuant to Section 72 of the APA and that a default be granted for Petitioner pursuant to Section 78 of the APA.

Section 72 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 of the APA states in pertinent part:

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

Petitioner's motion for default was granted. As a result of the default judgment, the factual allegations contained in Petitioner's Formal Complaint are taken as true.

During the hearing, the following exhibit was accepted into the record:

Petitioner's Exhibit 1 Satisfaction of Judgment - 61st Judicial District, Case No. 2000 GC 21-13, dated 5/10/01

No further evidence was offered for the record by Petitioner at the hearing.

ISSUES AND APPLICABLE LAW

The issues in this matter are whether Respondent has violated the following Code sections: 2411(2)(c) and (l); and 604(c), and Administrative Rule 51(2), which provide in pertinent part as follows:

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.

(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.

Sec. 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.

Rule 51(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. He shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

FINDINGS OF FACT

Based on the record and the default judgment granted for Petitioner, the undersigned makes the following findings of fact:

1. On or about October 9, 1999, Respondent entered into a contract with Anita Hill to perform services regulated by the Code.
2. Respondent, on July 6, 2000, had a judgment entered against him in the State of Michigan 61st Judicial District Court, in the case of Anita Hill v Jim Campbell d/b/a Jim Campbell Construction in the amount of \$2,459.78 plus interest.
3. Respondent has failed to satisfy the Judgment.
4. Respondent failed to account for money which belonged to Anita Hill.
5. Respondent failed to respond to the Complaint (Exhibit 1 to the Formal Complaint) in a timely manner.
6. 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 in this matter is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon 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 above findings of fact and the default judgment granted against Respondent, Petitioner has proven by a preponderance of the evidence that Respondent violated Sections 2411(2)(c) and (l); and 604(c) of the Code, as well as Rule 51(2), as follows:

1. Respondent, on July 6, 2000, had a judgment entered against him in the State of Michigan 61st Judicial District Court, in the case of Anita Hill v Jim Campbell d/b/a Jim Campbell Construction in the amount of \$2,459.78 plus interest. As of the time of the Formal Complaint on February 16, 2001, Respondent had failed to satisfy the Judgment, in violation of Section 2411(2)(l) of the Code.

2. Respondent failed to account for money which belonged to Anita Hill, in violation of Section 2411(2)(c) of the Code.

3. Respondent failed to respond to the Complaint (Exhibit 1 to the Formal Complaint) in a timely manner, in violation of Rule 51(2).

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

RECOMMENDATIONS

Based upon the above findings of fact and conclusions of law, the following recommendations are made by the undersigned to the Residential Builders and Maintenance and Alteration Contractors Board:

1. A civil fine of at least \$1,000.00 be assessed against Respondent.

2. Any and all licenses or registrations under the jurisdiction of the Code held by Respondent be suspended if the fine amount is not paid within the time frame set forth in the Final Order in this matter.

No restitution is recommended as the underlying Judgment has been satisfied, as of May 8, 2001(Petitioner's Exhibit 1).

Lauren G. Van Steel
Administrative Law Judge