

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS

In the matter of :

STATEWIDE BUILDINGS
KENNETH ALAN KANDARIS,
QUALIFYING OFFICER
License No. 21-02-114972

Docket No. 2002-130
Complaint No. 21-00-6921-00

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on January 7, 2003; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Lauren G. Van Steel, Administrative Law Judge, dated August 19, 2002;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Statewide Buildings, Kenneth Alan Kandararis, Qualifying Officer, License No. 21-02-114972, hereafter "Respondent", having been found in violation of Sections 604(c); 2411(2)(m) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(c); MCL 339.2411(2)(m) and Rules 51(4); 51(5) of the State Board of Residential Builders and Maintenance & Alteration Contractors General Rules, *promulgated hereunder*, being 1979 AC, 338.1551(4); 1979 AC, 338.1551(5) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed :

1. Respondent shall pay a FINE in the amount of Three Thousand Dollars and 00/100 Cents (\$3,000.00), said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the date of mailing of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 21-00-6921-00 clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the Department of Consumer & Industry Services, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.
2. Respondent's failure to comply with any term or condition of this Final Order shall REVOKE Respondent License No. 21-02-114972 and any and all other Article 24 license(s) held by or applied for by Respondent, MCL 339.2405(3) and result in DENIAL of any and all future applications of Respondent for licensure, relicensure or reinstatement until such time as the fine set forth in this Final Order is paid-in-full, MCL 339.204(c).

Failure to comply with the provisions of this Final Order is itself a violation of the *Occupational Code, supra*, pursuant to MCL 339.604(k) and may result in further disciplinary action, including license suspension and/or revocation.

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

In the matter of

Docket No.2002-130

Bureau of Commercial Services,
Petitioner

Agency No.21-00-6921-00

V

Agency: Bureau of Commercial
Services

Statewide Buildings,
Kenneth Alan Kandaris, Q.O.,
Respondent

Case Type: Sanction

_____ /

Issued and entered
this 19th day of August, 2002
by Lauren G. Van Steel
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracey Hampton Yarborough, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Statewide Buildings, Kenneth Alan Kandaris, Qualifying Officer, nor an attorney or representative on Respondent's behalf, appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated January 16, 2002, scheduling a hearing for March 4, 2002. On March 4, 2002, the hearing was commenced. Attorney Yarborough appeared on behalf of Petitioner. No one appeared on behalf of Respondent. After review of the Proof of Service for the Notice of Hearing of January 16, 2002, it was determined that Respondent had been erroneously served at the address of 7715 E. Millbrook Road, Sheridan, Michigan 48884, rather than

7715 E. Millbrook Road in Shepherd, Michigan 48883. The hearing was continued so that Respondent could be properly served with the Notice of Hearing.

On March 8, 2002, an Order for Continuance was issued, scheduling the continued hearing for May 2, 2002. On June 13, 2002, an Order Granting Adjournment was issued, rescheduling the continued hearing for July 24, 2002. Both the Order for Continuance, dated March 8, 2002, and the Order Granting Adjournment, dated June 13, 2002, were properly mailed to Respondent at 7715 E. Millbrook Road in Shepherd, Michigan 48883.

The Order Granting Adjournment, with a copy of the prior Notice of Hearing, was mailed to the parties' last known addresses and informed the parties that if they failed to appear at the scheduled hearing, a default 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.* (hereafter "APA")

On July 24, 2002, Attorney Yarborough appeared for Petitioner. Neither Respondent, nor an attorney or representative for Respondent, appeared at the hearing. (Ms. Yarborough stated that Mr. Kandaris, Qualifying Officer for Respondent, had come to the hearing room prior to the scheduled time for hearing of 9:30 a.m., but then left. All present for the hearing waited from the scheduled time for hearing of 9:30 a.m. until 10:00 a.m. to see whether Mr. Kandaris or any attorney or representative on Respondent's behalf would appear for the hearing; no one did.)

The Notice of Hearing was issued pursuant to a Formal Complaint dated October 19, 2001, which alleged noncompliance with the Michigan Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (hereafter "Code"), specifically Sections

604(c) and 2411(2)(m), as well as Rules 51(4) & (5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R 338.1551 (4) & (5).

The hearing was held as scheduled on July 24, 2002. At the hearing, Petitioner's representative requested to be allowed to proceed in Respondent's absence pursuant to Section 72 of the APA. Petitioner's representative also requested 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, the factual allegations contained in Petitioner's Formal Complaint are taken as true. Petitioner offered the following exhibits, which were accepted into the record:

Petitioner's Exhibits 1 to 18	Photocopies of photographs taken by Building Inspector Robert DuVall of building at 7780 N. Burkett Road, Lake City, Michigan
Petitioner's Exhibit 19	Field Correction Notice, dated November 27, 2000
Petitioner's Exhibit 20	Field Correction Notice, dated September 14, 2001
Petitioner's Exhibit 21	Field Correction Notice, dated July 14, 2001

Robert DuVall, Building Inspector for Missaukee County, testified for
Petitioner.

ISSUES AND APPLICABLE LAW

The issues in this matter are whether Respondent has violated Sections 604(c) and 2411(2)(m) of the Code, and/or Rules 51(4) & (5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R 338.1551 (4) & (5), which provide in pertinent part as follows:

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
[MCL 339.604(c)].

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:

* * *

(m) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official
[MCL 339.2411 (2)(m)].

Rule 51(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 [1979 AC, R 338.1551(4)].

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 [1979 AC, R 338.1551 (5)].

FINDINGS OF FACT

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

1. A Complaint against Respondent, conforming to the requirements of Section 2411 of the Code, has been filed with the Michigan Department of Consumer and Industry Services and is attached as Exhibit 1 to the Formal Complaint.
2. An authority charged with 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 evaluations of the Complaint submitted, attached as Exhibits 2 and 3 to the Formal Complaint.
3. On or about August 9, 2000, Respondent entered into a contract to perform services regulated by the Code with Rodney A. Siple, Complainant.
4. Respondent has failed to perform the requirements of the contract in a workmanlike manner.
5. Respondent, in performance of the contract, failed to comply with Sections 802.5 and 802.11 of 1993 Building Officials and Code Administrators Code and Sections R-301.3, R-309, R-309.2, R-309.3, R-402.3A, R-606.1A, R-702.10, R-708, R-303 and R-402.5 of 1992 Council of American Building Officials Code, which were adopted by

the County of Missaukee, via Ordinance #98-1, Section 1, effective June 9, 1998.

6. Respondent failed to correct those items shown as justified by Exhibits 2 and 3 to the Formal Complaint within a reasonable time.
7. Respondent has violated a rule of conduct in practicing an occupation.
8. The testimony of Robert DuVall, Building Inspector, confirmed the violations set forth in the building inspection reports for inspections conducted on November 27, 2000, and September 14, 2001 attached as Exhibits 2 and 3 to the Formal Complaint.
9. Petitioner is not seeking restitution on behalf of Complainant Rodney Siple, in light of civil litigation between Complainant and Respondent.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings [8 Callahan's Michigan Pleadings 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 granted against Respondent, Petitioner has proven by a preponderance of the evidence that Respondent

has violated Sections 604(c) and 2411(2)(m) of the Code, as well as Rules 51(4) & (5) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R 338.1551(4) & (5), as follows:

1. On or about August 9, 2000, Respondent entered into a contract to perform services regulated by the Code with Rodney A. Siple, Complainant. Respondent has failed to perform the requirements of the contract in a workmanlike manner, contrary to Section 2411 (2)(m) of the Code.
2. Respondent, in performance of the contract, failed to comply with Sections 802.5 and 802.11 of 1993 Building Officials and Code Administrators Code and Sections R-301.3, R-309, R-309.2, R-309.3, R-402.3A, R-606.1A, R-702.10, R-708, R-303 and R-402.5 of 1992 Council of American Building Officials Code, which were adopted by the County of Missaukee, via Ordinance #98-1, Section 1, effective June 9, 1998, contrary to Rule 51 (5).
3. Respondent failed to correct those items shown as justified by Exhibits 2 and 3 to the Formal Complaint within a reasonable time, contrary to Rule 51 (4).
4. Respondent has violated a rule of conduct in practicing an occupation, contrary to 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 \$1,000.00 be assessed against Respondent.
2. No restitution be ordered in light of civil litigation between Complainant Rodney Siple and Respondent.
3. Any and all licenses or registrations under the jurisdiction of the Code held by Respondent be suspended, if the above fine amount is not paid within the time period set forth in the Board's Final Order.

**Lauren G. Van Steel
Administrative Law Judge**