

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS**

**DEPARTMENT OF LABOR
& ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES
ex re/ JAMES L. SPYKERMAN
Complainant,
v**

**Docket No. 2002-1625
Complaint No. 11228
Former Complaint No. 21-02-2327-00**

**AMERICAN RESIDENTIAL, INC.
PATRICIA A. DOCKHAM
QUALIFYING OFFICER
License No. 21-04-124353
Respondent.**

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on November 9, 2004;

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Edward F. Rodgers, Administrative Law Judge, dated August 10, 2004;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and American Residential, Inc., Patricia A. Dockham, Qualifying Officer, Licensed Residential Builder, License No. 21-04-124353, hereafter "Respondent", having been found in violation of Section 2411(2)(I) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.2411(2)(I);

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

IT IS HEREBY 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 Two Thousand Five Hundred Dollars and 00/100 Cents (\$2,500.00), to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order, by cashier's check or money order, with**

Complaint No. 11228 clearly indicated on the check or money order, made payable to the State of Michigan and mailed to the Department of Labor & Economic Growth, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.

- 2. Respondent shall make RESTITUTION to James L. and Jacqueline R. Spykerman by fully satisfying Barry County Circuit Court Judgment entered in Case No. 2000-237-CK, dated November 13, 2001, in the amount of Forty-Nine Thousand Four Hundred Ninety-Five Dollars and 21/100 Cents (\$49,495.21), within ninety (90) days from the mailing date of this Final Order, OR, IN THE ALTERNATIVE, Respondent shall be and hereby is granted a period of ninety (90) days from the mailing date of this Final Order, to arrange, with James L. and Jacqueline R. Spykerman, a written, signed, and dated alternative PAYMENT PLAN for payment-in-full of the Forty-Nine Thousand Four Hundred Ninety Five Dollars and 21/100 Cents (\$49,495.21) restitution payable to James L. and Jacqueline R. Spykerman, which shall be subject to the written approval of the Bureau Of Commercial Services, Office of Administrative Services, within ninety (90) days mailing date of this Final Order.**
- 3. Respondent's failure to make payment-in-full of restitution required by the terms of this Final Order OR make compliance-in-full with any approved alternative payment plan filed with the Bureau of Commercial Services, Office Of Administrative Services, within applicable time periods, as required by the terms of this Final Order, shall suspend Respondent American Residential, Inc., Patricia A. Dockman, Qualifying Officer, License No. 21-04-124353, until restitution is made within the time periods provided by the terms of this Final Order and shall revoke any and all Article 24 licenses of Respondent, including license(s) issued to a corporate entity in which Respondent is the qualifying officer or individual license(s) issued to Respondent, if any, for failure to comply with all terms and conditions set forth in this Final Order.**
- 4. Respondent shall submit in writing to the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Office of Administrative Services, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance in a form acceptable to the Department with each and every requirement of this Final Order.**

This Final Order shall not be construed as limiting the Department of Labor & Economic Growth, any other agency of the State of Michigan, or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

Failure to comply with the provisions of this Final order is itself a violation of the Code pursuant to Section 604(k) and may result in further disciplinary action.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this ____ day of _____, 2005.

**BY: _____
Mark T. Glynn, Chairperson**

Date mailed: _____

Proof of Compliance should be filed with:

**Department of Labor & Economic Growth
Bureau of Commercial Services
Enforcement Division
Office of Administrative Services
P.O. Box 30018
Lansing, MI 48909**

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF HEARINGS**

In the matter of

Docket No. 2002-1625

**Bureau of Commercial Services,
Petitioner**

Agency No. 11228

Agency: Bureau of Commercial Services

**v
American Residential, Inc.
Patricia A. Dockham, Q.O.,
Respondent**

Case Type: Sanction

**Issued and entered
this 10th day of August, 2004
by Edward F. Rodgers
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

On August 9, 2002, Mr. G. Archie Millben, Director, Commercial Enforcement Division, Bureau of Commercial Services, issued and entered a Formal Complaint in this matter. On December 16, 2002, the Bureau of Hearings (Bureau) received a Request for Hearing. On December 20, 2002 the Bureau issued a Notice of Hearing. The Notice of Hearing scheduled a contested case hearing to commence on February 10, 2003.

On January 29, 2003, the Honorable Lauren G. VanSteel, Administrative Law Judge, granted an adjournment request from the Bureau of Commercial Services. This order rescheduled the contested case to commence on April 14, 2003.

On March 19, 2003, the Honorable Robert H. Mourning, Administrative Law Judge, issued and ordered an order adjourning the contested case until April 23, 2003. This order was issued due to the fact that Judge Mourning had been reassigned this matter.

On April 23, 2003, the contested case hearing commenced. Ms. Tracey Yarborough, Attorney at Law, appeared on behalf of the Bureau of Commercial Services and Ms. Mary Owens, Attorney at Law, appeared on behalf of American Residential Inc., Patricia A. Dockham, Q.O., Respondent. At the conclusion of the hearing on April 23, 2003, Judge Mourning set deadlines for the filing of post-hearing briefs.

On May 16, 2003, Ms. Owens, on behalf of the Respondent filed a post-hearing brief.

The Petitioner's post-hearing brief was due 30 days after the filing of the Respondent's post-hearing brief. Judge Mourning closed the evidentiary record on this matter on June 22, 2003. On July 31, 2003, Judge Mourning issued his decision (Hearing Report) in this matter.

On August 12, 2003, Ms. Yarborough filed on behalf of the Petitioner, a Motion for Reconsideration and Alternative Order for Stay. On August 20, 2003, Ms. Owen's on behalf of the Respondent filed a Response to the Motion for Reconsideration.

On December 3, 2003 Judge Mourning denied the Motion for Reconsideration and/or Stay.

On May 6, 2004, the Bureau of Hearings received from the Petitioner herein, the Bureau of Commercial Services, a Second Request for Hearing. In his July 31, 2003 decision, Judge Mourning found that on November 13, 2001, a Judgment was entered against the Respondent in the Circuit Court for Barry County, which exceeded \$40,000.00. In addition, Judge Mourning found that the Respondents had made a timely appeal of the Judgment to the Court of Appeals. See Judge Mourning's decision at p. 5. In addition, Judge Mourning found that the Respondent was entitled, under Michigan Law, to perfect an appeal of the Judgment from the Circuit Court to the Court of Appeals. Having found that an appeal had been perfected, Judge Mourning found that the Petitioner had not proven by a preponderance of the evidence that the Respondent had violated Section 2411(2)(l) of the Code. The code being the Occupational Code (Code) of 1980, 1980 PA 299, as amended, being MCL 339.101 *et seq.*

The Second Request for Hearing, which was filed on May 6, 2004, indicated that the Respondent's appeal had resulted in the decision by the Court of Appeals upholding the judgment from Circuit Court. Thus, making this matter now ripe for a possible contested case hearing.

On May 10, 2004, the Bureau of Hearings issued a Notice of Hearing scheduling a contested case hearing for June 30, 2004. On June 11, 2004, a second document was issued by the Bureau. This document was entitled "Amended Notice of Remand Hearing". This document also scheduled the contested case hearing for June 30, 2004.

The contested case hearing commenced on June 30, 2004 as scheduled. Ms. Elizabeth Band, Attorney at Law, appeared on behalf of the Petitioner, herein the Bureau of Commercial Services. Ms. Mary Owens, Attorney at Law, once again appeared on behalf of the Respondent.

Between the April 24, 2003 and June 30, 2004 hearing days, the Petitioner offered into evidence four exhibits. The following exhibits from the Petitioner have been admitted into the record.

1. Petitioner Exhibit 1 is a copy of the Judgment from the Circuit Court for the County of Barry, State of Michigan, dated November 13, 2001.
2. Petitioner Exhibit 2 is the decision of the Court of Appeals dated September 23, 2003.
3. Petitioner Exhibit 3 is an Order dated May 28, 2004 from the Michigan Supreme Court, denying the Respondent's appeal from the Court of Appeals Judgment of September 23, 2003.
4. Petitioner Exhibit 4 is a March 24, 2004 letter from Alexander Collection Agency signed by Larry Alexander. This document alleges that the Respondents herein owe \$49,495.21.

During these proceedings, the Respondent has offered into the record two exhibits. The following exhibits have been admitted into the record on behalf of the Respondent:

1. Respondent Exhibit A is a copy of a Claim of Appeal in the Court of Appeals by the Respondent.

2. Respondent Exhibit B is a copy of a Request and Order to Seize Property dated March 31, 2004. This document indicates that \$1,187.80 had been received by the Respondent for the Post Judgment total of \$50,683.01 in the matter of James L. and Jacqueline R. Spykerman v American Residential Inc.

During the June 30, 2004 hearing, Mr. Robert J. Longstreet testified on behalf of the Petitioner. Mr. Longstreet indicated he was the Attorney for Mr. and Mrs. Spykerman in the civil litigation against the Respondent. Mr. Longstreet, a licensed attorney in the state of Michigan represented the Spykermans in the Barry County Circuit Court matter.

Also during the June 30, 2004 hearing, Ms. Patricia A. Dockham, the Respondent herein as the Qualifying Officer of American Residential Inc. testified on behalf of the Respondents.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether or not the Respondent violated the Occupational Code 1980 PA 299, as amended, being MCL 339.101 *et seq.* (Code). The specific issue in this case is whether or not the Respondent violated Section 2411(2)(I) of the Code being MCL 339.2411(2)(I). That Section of the Code states in pertinent part:

339.2411 Complaint; conduct subject to penalty; suspension or revocation of license; violations; administrative proceedings regarding workmanship; "verified complaint" defined.

Sec. 2411.

(1) A complaint filed under this section or article 5, or both, shall be made within 18 months after completion, occupancy, or purchase, whichever occurs later, of a residential structure or a combination of residential and commercial structure.

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

DISCUSSION

Mr. Longstreet testified that he was the attorney for Mr. James and Mrs. Jacqueline Spykerman in the Barry County Circuit Court matter against American Residential Inc. He testified that the Judgment was obtained on November 13, 2001 in the Barry County matter. He also testified that on May 28, 2004, the Supreme Court issued an Order Denying Leave to Appeal the Court of Appeals Decision.

Mr. Longstreet also indicated that after refreshing his memory with Petitioner Exhibit 4 that after March 17 or March 18, 2004, there was still owed on the Outstanding Judgment \$49,495.21.

Ms. Dockham testified that she is the Qualifying Officer for American Residential. She also acknowledged that there had been a Judgment rendered in the case involving the Spykermans against the corporation.

Ms. Dockham admitted that there were still between \$49,000 and \$50,000 still owed on the original Judgment.

Ms. Dockham admitted that the Judgment had not been paid. Ms. Dockham also understands that the Judgment from the Barry County Circuit Court is now a Final Judgment that must be paid.

In closing arguments the Petitioner argued that the only issue before this Tribunal was the Respondent's failure to satisfy the Judgment, pursuant to MCL 339.2411(2)(l). Petitioner taking the position that the exhibits and testimony show the Judgment has not been satisfied and the Respondent has violated that portion of the Code.

Ms. Band on behalf of the Petitioner recommended a minimal civil fine of \$2,500 but the actual amount to be left open to the Board's discretion.

Ms. Band also recommended that the Board consider a probation for the Respondent for a period of one year during which time the Respondent must either pay the Judgment or take steps towards settling the Judgment matter and providing proof to the Board and to the Bureau of Commercial Services, that the Respondent had either settled the matter with the Spykermans or paid the Judgment in full. In the alternative, Ms. Band recommended that if the Board chose not to put the Respondent on probation, that the Board suspend the license until the Judgment had either been settled by way of settlement or paid in full.

Ms. Owens on behalf of the Respondent recommended that the licensees be given an opportunity to make arrangements with the Spykermans for a payment plan or a settlement of the Judgment. She recommended the Board give her clients at least one year to pay off the amount of approximately \$50,000.00.

Ms. Dockham indicated to the Judge that the company was still operating and there is now "some cash flow". Ms. Dockham was confident that a

payment plan could be arranged to pay off the Judgment or to make a lump sum settlement.

FINDINGS OF FACT

Based upon the record as a whole in this matter, including the pleadings, the exhibits, and the testimony of the witnesses, the following Findings of Fact were established by a preponderance of the evidence:

1. American Residential Inc., Patricia A. Dockham, Qualifying Officer has at all times relevant to this matter been licensed as a residential builder under the Code.

2. On November 13, 2001, a Judgment was entered against the Respondents in the Circuit Court for the County of Barry, state of Michigan, in the case of James L. and Jacqueline R. Spykerman v American Residential Inc.

3. The Respondents have failed to satisfy the Judgment.

4. The Respondents still owe the Spykermans approximately \$49,495.21 plus any statutory interest that may still be accruing.

5. The Respondents are desirous of settling the Judgment matter with the Sypkermans or arranging a payment plan while having their license put on probation.

6. The state also recommended that some type of probation, within the Board's discretion would make sense in an attempt to allow the Respondents to pay this Judgment.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleadings and Practice (2d Ed), Section 60.48, page 230.

In this matter, the Petitioner has the burden of establishing by a preponderance of the evidence that the Respondent violated the Code. The Petitioner, the Bureau of Commercial Services, has met that burden. Based upon the record as a whole in this matter as established by a preponderance of the evidence, the following Conclusions of Law are established:

1. The Respondent has failed to satisfy the November 13, 2001 Judgment from the Barry County Circuit Court in the matter of Mr. and Mrs. Spykerman v American Residential Inc.
2. The Respondent has violated Section 2411(2)(l) of the Code being MCL 339.2411(2)(l).

DECISION

Based upon the Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge finds that the Respondent has violated Section 2411(2)(l) of the Code.

RECOMMENDED PENALTIES

Based upon the Respondent's violation of 2411(2)(l) of the Code, the following penalties are recommended:

1. The Respondent should be ordered to pay restitution in the amount of \$49,495.21 to Mr. and Mrs. Spykerman, or an amount in full if an

agreed settlement is reached on the Circuit Court Judgment between the parties.

2. The Respondent should be given 90 days to settle the Judgment with the Spykermans or arrange a payment plan with the Spykermans for payment in full, with the Bureau of Commercial Services approving of any payment plan.
3. If a settlement is not reached between Mr. and Mrs. Spykerman and the Respondent on the Judgment, or a payment plan is not agreed upon to pay the Judgment in full of \$49,495.21, with the approval of the Bureau of Commercial Services, the Respondent's license should be suspended until such time as restitution is paid in full and/or a settlement of the Judgment is reached.
4. The Respondent should pay a civil fine in the amount of \$2,500.
5. If the Respondent fails to make full restitution and/or settle the Judgment with Mr. and Mrs. Spykerman within the terms of the Board's order and/or fails to pay the \$2,500 civil fine within 90 days of the Board's Penalty Order, the Board should REVOKE the Respondent's license.

Edward F. Rodgers
Administrative Law Judge