

**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**

Complainant,

v

**MARION C. MOORE
License No. 21-01-088932
Respondent.**

Docket No. 2003-1425

Complaint No. 85849

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on May 4, 2004;

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Renee A. Ozburn, Administrative Law Judge, dated February 26, 2004;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Marion C. Moore, Licensed Residential Builder, License No. 21-01-088932, hereafter "Respondent", having been found in violation of Sections 2411(2)(c) of the Michigan Occupational Code, 1980 P.A. 299, as *amended*, hereafter the "Code", MCL 339.2411(2)(c);

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 Three Thousand Dollars and 00/100 Cents (\$3,000.00). Said fine shall be paid to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order. Fine shall be paid by cashier's check or money order, with Complaint No. 85849 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 Marion C. Moore, Licensed Residential Builder, License No. 21-01-088932, and any and all other Article 24 license(s), if any, shall be and hereby are IMMEDIATELY REVOKED, MCL 339.2405(3), effective the mailing date of this Final Order. Respondent may not serve as the Qualifying Officer of any licensed corporate entity while his individual license is in revoked status. No application for licensure, relicensure or reinstatement shall be considered by the Department until the fine imposed by this Final Order is paid-in-full.**
- 3. Respondent shall submit in writing to the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Audit Unit, 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.

This Final Order is effective immediately upon its mailing.

**Given under my hand at Okemos, Michigan, this ____ day of _____,
2004.**

**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
Audit Unit
P.O. Box 30018
Lansing, MI 48909**

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

In the matter of

Docket No. 2003-1425

**Bureau of Commercial Services,
Petitioner**

Agency No. 85849

v

**Agency: Bureau of Commercial
Services**

**Marion C. Moore,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 26th day of February 2004
by Renee A. Ozburn
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

On June 5, 2003, the Bureau of Commercial Services issued a Formal Complaint alleging that Marian C. Moore, a licensed residential builder, violated provisions of the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (Code) A hearing was held in this matter on February 20, 2004, in hearing rooms of the Department of Labor & Economic Growth, Bureau of Hearings, in Grand Rapids, Michigan. Attorney Tracey Hampton-Yarborough appeared on behalf of the Bureau of Commercial Services (Petitioner). Attorney Martin Rogalski appeared on behalf of Marian Moore (Respondent).

ISSUES AND APPLICABLE LAW

The Formal Complaint cites Code Sections 2411(2)(c) and 2411(3) as the statutory authority for the allegations against Mr. Moore. These sections provide:

339.2411 Complaint; conduct subject to penalties; suspension or revocation of license;...

- (2) A licensee or applicant, who commits 1 or more of the following shall be subject to penalties set forth in article 6:
 - (c) Failure to account for or remit money coming into the person's possession which belongs to others.
- (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 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 cost 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.

SUMMARY OF EXHIBITS

Petitioner's Exhibits:

Exhibit 1 Litigation Cost Report

Respondent's Exhibits:

Exhibit A Chapter 13 Bankruptcy Discharge

Exhibit B. Chapter 13 Trustee's Report

Exhibit C. Chapter 7 Bankruptcy Trustee's Report

FINDINGS OF FACT

1. Marian C. Moore, has at all times relevant to this Complaint, been licensed as a residential builder under the Occupational Code, or was seeking renewal of such license.
2. On November 9, 2001, as a result of Mr. Moore's failure to pay one or more lien claimants, payment was made by the Homeowners Construction Lien Recovery Fund in the amount of \$924.00 to Genzink Plumbing, Inc.
3. The facts underlying said payment arose out of and in connection with the performance of Mr. Moore's duties as a licensed residential builder and/or residential maintenance and alteration contractor.
4. Mr. Moore admits that he failed to account for money, which belongs to Richard J Libsig, Trustee of the Richard J. Libsig Trust, contrary to code section 2411(2)(c).

5. The Bureau of Commercial Services dismisses the allegation that Mr. Moore failed to remit money which belonged to Richard J. Libsig, Trustee of the Richard J. Libsig Trust, to Genzink Plumbing, Inc., as alleged in paragraph 4 of the Formal Complaint.
6. Mr. Moore has had both Chapter 13 and Chapter 7 bankruptcy discharges as noted in Exhibits A, B, and C.
7. The parties stipulate that Mr. Moore has no record of previous Code violations.

CONCLUSIONS OF LAW

The above Findings of Fact, and Mr. Moore's admission, establish that Mr. Moore violated Section 2411(2)(c).

RECOMMENDED SANCTION

Because of the bankruptcies noted above, the Bureau of Commercial Services is not seeking restitution to the lien recovery fund pursuant to Section 2411(3). The Bureau of Commercial Services recommends, and the undersigned Administrative Law Judge concurs, that Mr. Moore should be ordered to pay a civil fine of \$3000. Further, Mr. Moore's Article 24 license(s) should be suspended until the fine is paid.

Renee A. Ozburn
Administrative Law Judge