

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

In the matter of:

**MCDONALD BUILDERS, INC.
FLOYD CHARLES MCDONALD
QUALIFYING OFFICER
License No. 21-02-145232**

**Docket No. 2003-69
Complaint No. 10801
Former Complaint No. 21-02-0352-00**

OTHER LICENSES:

**CUSTOM CARPENTRY & SUPPLY, INC.
FLOYD C. MCDONALD, QUALIFYING OFFICER
License No. 21-02-043918 (Lapsed)**

**FLOYD D. MCDONALD
D/B/A F.C. MCDONALD COMPLETE CARPENTRY SERVICE
License No. 21-01-042291 (Lapsed)**

_____/_____
FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on November 4, 2003;

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Erick Williams, Administrative Law Judge, dated July 29, 2003;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and McDonald Builders, Inc., Floyd Charles McDonald, Qualifying Officer, Licensed Residential Builder, License No. 21-02-145232, hereafter "Respondent", having been found in violation of Sections 604(c); 604(g); 2411(2)(d); 2411(2)(e); 2411(2)(m) of the Michigan Occupational Code, 1980 P.A. 299, as amended, hereafter the "Code", MCL 339.604(c) MCL 339.604(g); MCL 339.2411(2)(d); MCL 339.2411(2)(e); MCL 339.2411(2)(m) and Rules 51(2) and 51(4) of the State Board of Residential Builders and Maintenance & Alteration Contractors General Rules, *promulgated hereunder*, being 1979 AC, R 338.1551(2) and 1979 AC, R 338.1551(4);

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 Ten Thousand Dollars and 00/100 Cents (\$10,000.00), a higher fine than recommended by the Administrative Law Judge, because of the severity of the violations, particularly incompetence and willful violation of building law/codes, said fine to be paid to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 10801 clearly indicated on the check or money order, made payable to the State of Michigan and sent 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 Barbara Manier in the amount of Thirty-Two Thousand Five Hundred Dollars and 00/100 cents (\$32,500.00), made payable to Barbara Manier, and mailed to Barbara Manier, 600 Hixon Place, Vassar, MI 48768, within sixty (60) days from the mailing date of this Final Order.**
- 3. Respondent Mc Donald Builders, Inc., Floyd Charles McDonald, Qualifying Officer, License No. 21-02-145232, shall be and hereby is SUSPENDED effective the mailing date of this Final Order. Any and all other Article 24 licenses of Respondent, including Custom Carpentry & Supply, Inc., Floyd C. McDonald, Qualifying Officer, License No. 21-02-043918 (Lapsed), and Floyd D. McDonald d/b/a F.C. McDonald Complete Carpentry Service, License No. 21-01-042291 (Lapsed), shall be and hereby are immediately SUSPENDED effective the mailing date of this Final Order, MCL 339.2405(3). No application for licensure, relicensure or reinstatement shall be considered by the Department until fine and restitution are paid-in-full.**
- 4. Respondent shall submit in writing to the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Enforcement Division, Audit Unit, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance with each and every requirement of this Final Order, in a form acceptable to the Department.**

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 4th day of November 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

This is the final page of a Final Order in the matter of McDonald Builders, Inc., Floyd Charles McDonald, Q.O., Licensed Residential Builder, Complaint No. 10801 before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, consisting of three (3) pages, this page included.

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

In the matter of

**Bureau of Commercial Services,
Petitioner**

v

**McDonald Builders, Inc.
Floyd Charles McDonald, Q.O.,
Respondent**

Docket No. 2003-69

Agency No. 10801

Agency: Bureau of Commercial Services

Case type: Sanction

**Issued and entered
this 29th day of July 2003
by Erick Williams
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

On October 22, 2002, the Bureau of Commercial Services issued a complaint against McDonald Builders, Inc., under the Occupational Code, MCL 339.101 *et seq.* A hearing was scheduled for March 21, 2003 and adjourned at the request of McDonald Builders to June 23, 2003. Notice of the June 23rd hearing was sent to McDonald Builders and its attorney, Ronald G. Tier. When the hearing convened, Tracy Hampton-Yarborough represented the Bureau of Commercial Services, but no one appeared on behalf of McDonald Builders. Since the complaint and hearing notice had been served on McDonald Builders, I find that service was adequate to hold a hearing under the Administrative Procedures Act, MCL 24.201 *et seq.* and issue a ruling in the respondent's absence. By default, I consider the complaint true and that McDonald Builders violated the laws cited in the complaint. I adopt the recommendations of the

Bureau of Commercial Services: \$32,500 restitution (based on Exhibits 1 through 6), and a \$1,250 fine.

ISSUES AND APPLICABLE LAW

The complaint alleges violations of the following statutes: MCL 339.604(c) and (g) read:

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.

(g) Commits an act which demonstrates incompetence.

MCL 339.2411(2)(d). (e), and (m) read:

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

(d) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

(e) A willful violation of the building laws of the state or of a political subdivision of the state.

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

1979 AC R 338.1551(2) and (4) read:

(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 a portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

(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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There are no contested issues of fact or law. The charges in the complaint are taken as true. The Bureau of Commercial Services recommends a \$1,250 fine and \$32,500 restitution to the homeowner, Barbara Manier, based on Exhibits 1 through 6.

Erick Williams
Administrative Law Judge