

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

**In the matter of**

**Docket No. 2003-8**

**Bureau of Commercial Services,  
Petitioner**

**Agency No. 10396**

**v**

**Agency: Bureau of Commercial Services**

**P. Jenkins Family Construction, L.L.C.  
Percy Malcolm Jenkins, Q.O.,  
Respondent**

**Case Type: Sanction**

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**Issued and entered  
this 9<sup>th</sup> day of April, 2003  
by Lauren G. Van Steel  
Administrative Law Judge**

**HEARING REPORT**

**PROCEDURAL HISTORY**

Appearances: Tracey Hampton Yarborough, Attorney, appeared on behalf of Petitioner, Bureau of Commercial Services. Percy Jenkins appeared on behalf of P. Jenkins Family Construction, L.L.C., Percy Malcolm Jenkins, Q.O., Respondent.

This proceeding commenced with the filing of a Notice of Hearing dated January 7, 2003, scheduling a hearing for February 10, 2003. The Notice of Hearing was issued pursuant to a Formal Complaint filed on July 29, 2002, 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 Rule 51(4) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R 338.1551(4).

The hearing was held as scheduled on February 10, 2003. Elnora Hayes, Complainant, and Kevin Cardiff, Building Official for the Charter Township of Kalamazoo, testified for Petitioner. Petitioner offered the following exhibits, which were accepted into the record:

|                            |                                                                         |
|----------------------------|-------------------------------------------------------------------------|
| Petitioner's Exhibit 1a-1e | Photographs of garage and driveway at 1047 Craft in Kalamazoo, Michigan |
| Petitioner's Exhibit 2     | Proposal, Putman Concrete, dated 3/22/01                                |
| Petitioner's Exhibit 3     | Proposal, Wolthuis Concrete, dated 2/28/02                              |
| Petitioner's Exhibit 4     | Estimate, P. Jenkins Family Construction, L.L.C., dated 7/9/00          |
| Petitioner's Exhibit 5     | Copies of checks – Old Kent, dated 7/28/00 and 12/13/00                 |

Mr. Jenkins testified for Respondent and offered the following exhibits that were admitted into the record:

|                            |                                                                                      |
|----------------------------|--------------------------------------------------------------------------------------|
| Respondent's Exhibit A     | Letter dated 11/10/00 from Percy M. Jenkins                                          |
| Respondent's Exhibit B     | Letter dated 3/25/02 to Dept. of Consumer & Industry Services, from Percy M. Jenkins |
| Respondent's Exhibit C     | Letter dated 11/29/00 to Ms. Hayes from Percy M. Jenkins                             |
| Respondent's Exhibit F     | Consumers Concrete Corporation fax, dated 11/12/02, and letter dated 5/16/01         |
| Respondent's Exhibit G     | Peterman Concrete Company, dated 12/12/02                                            |
| Respondent's Exhibit H1-H8 | Photographs of property at 1047 Craft in Kalamazoo, Michigan                         |

Note: Respondent's proposed Exhibits D and E were not admitted, for reasons stated on

the record.

**ISSUES AND APPLICABLE LAW**

The issues in this matter are whether Respondent has violated Sections 604(c) and/or 2411(2)(m) of the Code, and/or Rule 51(4) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R 338.1551(4), 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)].

**FINDINGS OF FACT**

The following facts are found to be shown by a preponderance of the evidence in the record:

1. Respondent has been a licensed builder in the state of Michigan since 1988.
2. On or about July 28, 2000, Elnora Hayes, the Complainant in this matter, contracted with Respondent to construct a new concrete driveway and build a 24' by 24' garage on her home property at 1047 Craft Avenue in Kalamazoo, Michigan.
3. The agreed upon price for the work was \$10,000.60, half down and half upon completion [Pet. Exh. 4].
4. Respondent installed the driveway sub-grade and poured the concrete driveway, using a subcontractor. The "apron" to the driveway had been poured earlier by another contractor. Respondent also built the garage.
5. To date, the Complainant has paid Respondent \$9,200.00 of the \$10,000.00 contract price [Pet. Exh. 5].
6. There is a slope on the Complainant's property from the front of the house to the road. The driveway slab was held down approximately 1 inch in an attempt to prevent water from running under the garage door [Resp. Exh. F].
7. The flatness of the lot and the grade of the concrete slab causes water to collect from the runoff of the building and to drain away very slowly [Resp. Exh. F].
8. One month after the concrete driveway was poured and the garage built, water started coming into the garage on the front and side, the concrete

on the driveway cracked and the wood trim on the garage's main door popped out [Pet. Exh. 1b - 1e].

9. The concrete "apron" to the driveway also cracked, but it had been installed by another contractor, prior to Respondent pouring the driveway.
10. In May 2001, the Complainant obtained the opinion of Consumers Concrete Corporation, which recommended caulking the concrete cracks and installing a control joint down the middle of the driveway. The company noted that "it is a nice appearing driveway. The finish looks good and cross jointing was placed correctly" [Resp. Exh. F].
11. The Complainant discussed the garage and driveway problems with Respondent, who agreed to make repairs. At some point also the Complainant sought legal assistance when there was a breakdown in the communication between Respondent and the Complainant over final payment and other issues [Resp. Exh. C].
12. Respondent returned to the garage and driveway site on more than one occasion to make repairs.
13. He caulked the driveway cracks, but they soon opened up again and grass grew in. He also caulked under the side service door, where water was coming into the garage. The Complainant's brother also put in foam insulation around the side door to prevent water seepage.
14. Respondent had not put in control joints in the driveway initially.

15. In August 2001, Respondent saw cut joints into the driveway, but in a substandard, misaligned fashion [Pet. Exh. 1c].
16. Kevin Cardiff is the building official from the Charter Township of Kalamazoo who responded to the Complainant's request to inspect the driveway and garage.
17. At his inspection on October 4, 2001, Mr. Cardiff found a workmanship problem with the J channel and garage trim, which was improperly anchored into the garage framing member.
18. As for the water in the garage, Mr. Cardiff noticed that there was water all around the perimeter of the garage which could indicate that water flowed from the property next door where there had also been standing water. The Complainant's and neighbor's lots are both flat. It is also possible, in Mr. Cardiff's opinion, that landscaping or flowers around the garage held in moisture that later seeped into the garage's foundation blocks.
19. On October 4, 2001, Mr. Cardiff found an excessive amount of cracks in the driveway, that had only been poured about a year before [Exh. 2 to Formal Complaint].
20. Mr. Cardiff determined that if the sub-grade to the driveway had been prepared properly, there would not be the number or size of driveway cracks found in October 2001.

21. In Mr. Cardiff's opinion, if the driveway had been driven on before the poured concrete had cured (at least within one week of it having been poured), that could have caused the cracks seen. Respondent has alleged that the Complainant drove on the driveway within 3-4 days after the pouring, but this was not admitted by the Complainant at the hearing [Resp. Exh. B].
22. The Complainant has received written proposals to replace the driveway of \$5050.00 and \$7,790.00 [Pet. Exh. 2 & 3]. Petitioner is seeking an average of these two figures, \$6,420.00, in restitution for the Complainant. Mr. Cardiff stated at the hearing that the estimates accurately reflect the work that needs to be done on the driveway and grading.
23. In February 2002, Respondent obtained the opinion of Peterman Concrete Company, which stated as follows:

Cracking has appeared in center portion and outer edge of driveway. Concrete drive has been jointed to proper portions, which is 10' by 12' and cuts are in depth of 1/4" of the thickness of slab. Curing time on a driveway, prior to driving on, is 10 days at this time of the year. With vehicles not being driven or parked on said drive during this period. It appears this may not have been the case. \* \* \* [T]he mix design of concrete or workmanship appears not to be a problem" [Resp. Exh. G; emphasis supplied].

24. Respondent failed to put in proper control joints in the driveway, which in part caused the excessive cracking. His subsequent repair, installing misaligned control joints, was substandard.
25. Respondent also failed to sufficiently grade or pitch the driveway, to prevent standing water on the driveway and water run-off into the garage. It is found that Respondent's actions were two-thirds' responsible for the driveway cracks and the probable cause for part of the water problem in the garage.
26. The insufficient grading is not the only probable cause for the water problem in the garage, in that the Complainant's entire lot is very flat, allowing poor drainage, and the landscaping around the foundation could have contributed to the problem.
27. It is also found more likely than not that the Complainant either drove on the driveway or allowed it to be driven on before the concrete was properly cured, which contributed to the excessive cracking. It is found that Complainant's actions were one-third of the cause for the driveway cracking.
27. While Complainant and Respondent are both responsible for the damage caused to the driveway, Respondent is primarily responsible. Respondent should be responsible for two-thirds of the \$6,420.00 estimated cost to replace the driveway, or \$4,280.00.



28. Respondent is also responsible for improperly installing the side service door and trim around the main garage door. These items have apparently been repaired now and are not a part of the requested restitution.

### **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.

Based upon the above findings of fact, Petitioner has proven by a preponderance of the evidence that Respondent has violated Section 2411(2)(m) of the Code. Respondent's work in installing the driveway showed poor workmanship, because he did not include proper control joints. His subsequent repair to the driveway was substandard. Also, Respondent's installation of the side service door and garage door trim demonstrated poor workmanship.

The record evidence shows, however, that the cracking in the Complainant's driveway was not solely a result of Respondent's poor workmanship. It has been found as more likely than not that the Complainant is partly responsible for the damage shown, by driving on the driveway before the concrete had cured.

Further, Petitioner has not shown, by a preponderance of the evidence, that Respondent failed to make repairs when given notice of the problems described above. The record shows that Respondent returned to the garage and driveway site on more than one

occasion, attempting to make repairs. He discussed the problems with the Complainant and called in two other contractors for their opinions. The repairs made to the garage were apparently to the Complainant's satisfaction, eventually. Although Respondent's repair to the driveway was substandard, it would not be accurate to conclude that he failed to make repairs and thus violated Section 604(c) of the Code or Rule 51(4).

In summary, Petitioner has proven by a preponderance of the evidence that Respondent has violated Section 2411(2)(m) of the Code, but has not proven violation of Section 604(c) of the Code or Rule 51(4) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R338.1551(4).

### **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 \$500.00 be assessed against Respondent;
2. Respondent be ordered to pay restitution in the amount of \$4,280.00 to the Complainant, Elnora Hayes; and
3. Any and all licenses or registrations under the jurisdiction of the Code held by Respondent be suspended if the fine and restitution amounts are not paid within the time frame set forth in the Board's Final Order.

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