

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

NEIGHBORS MASONRY CONSTRUCTION, L.L.C. Docket No. 2003-833
CHRISTOPHER THOMAS NEIGHBORS Complaint No. 10832
QUALIFYING OFFICER Former Complaint No. 21-02-0480-00
License No. 21-02-141039 (Lapsed)

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the “Board”, on January 6, 2004 and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Gregory Holiday, Administrative Law Judge, dated November 12, 2003,

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Neighbors Masonry Construction, L.L.C., Christopher Thomas Neighbors, Qualifying Officer, Licensed Residential Builder, License No. 21-02-141039 (Lapsed), hereafter “Respondent”, having been found in violation of Sections 604(c); 2411(2)(a) of the Michigan Occupational Code, 1980 P.A. 299, as amended, hereafter the “Code”, MCL 339.604(c); MCL 339.2411(2)(a) and Rule 51(2) of the State Board of Residential Builders and Maintenance & Alteration Contractors General Rules, *promulgated hereunder*, 1979 AC, R 338.1551(2);

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 only a FINE in the amount of Eight Thousand Dollars and 00/100 Cents (\$8,000.00), a higher fine amount than recommended by the Administrative Law Judge, because of the severity of the violations, particularly abandonment and violation of a rule of conduct, 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. 10832 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 Paul and Janice Simmons in the amount of Seven Thousand Seven Hundred Thirty-Four Dollars and 87/100 Cents (\$7,734.87) by certified check made payable to Paul and Janice Simmons and mailed to 3564 Blue Heron Lane, Rochester Hills, MI 48039, within sixty (60) days from the mailing date of this Final Order.**
- 3. Neighbors Masonry Construction, L.L.C., Christopher Thomas Neighbors, Qualifying Officer, Licensed Residential Builder, License No. 21-02-141039 (Lapsed), and any and all other Article 24 license(s) held by Respondent, if any, shall be and hereby are IMMEDIATELY REVOKED, effective the mailing date of this final order, including licenses issued to a corporate entity and the individual licenses(s) held by Respondent's Qualifying Officer. No application for licensure, relicensure or reinstatement shall be considered by the Department until the fine and restitution imposed by this Final Order are paid-in-full.**
- 4. Respondent shall submit in writing to the Michigan Department of Labor and Economic Growth, Bureau of Commercial Services, 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 ____ 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**

Christopher Thomas Neighbors
Qualifying Officer
Complaint No.10832

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

In the matter of

Docket No. 2003-833

**Bureau of Commercial Services,
Petitioner**

Agency No. 10832

**v
Neighbors Masonry Construction,
L.L.C., Christopher Thomas
Neighbors, Q.O.,
Respondent**

**Agency: Bureau of Commercial
Services**

Case Type: Sanction

_____/

**Issued and entered
this 12th day of November 2003
by Gregory Holiday
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint dated December 20, 2002, charging Respondent with one or more violations of the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.* Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*, Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to

satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing.

The hearing was scheduled to be held on Thursday, September 4, 2003 at 9:00 a.m., at the Bureau of Hearings of the Department of Labor & Economic Growth, Cadillac Place, 2nd Floor Annex, Room 2-700, 3026 West Grand Boulevard, Detroit, Michigan, and the same proceeded at about 11:00 a.m. Gregory Holiday presided as Administrative Law Judge. Michael A. Lockman, Assistant Attorney General, appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Consumer and Industry Services (Petitioner). Christopher Thomas Neighbors appeared for Neighbors Masonry Construction, L.L.C., Christopher Thomas Neighbors, Qualifying Officer (Respondent). Sara E. Hernandez, Janice Simmons and Paul Simmons testified as witnesses for Petitioner at the hearing. Christopher Thomas Neighbors testified as an adverse witness for Petitioner.

ISSUES AND APPLICABLE LAW

The general issue presented is whether Respondent violated the Code, with respect to the practice of a residential builder or maintenance and alteration contractor. The specific issues are whether Respondent violated Builder Rule 1979 AC, R 338.1551(2) and Sections 604(c) and 2411(2)(a) of the Code, which provide, in pertinent part:

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.

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:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

Rule 51...(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.

EXHIBITS

Petitioner offered the following exhibits for consideration at the hearing:

<u>Exhibit</u>	<u>Description</u>
1	Undated Estimate of \$18,695 for Simmons with diagram, Receipt for Deposit for Basement, Receipt for Payment under payment schedule, and Credit for not moving bathroom plumbing
2	Copy of May 8, 2002 Notice to Respondent
3	Photo showing space between floor and drywall

- 4 Photo showing the space for the Cedar Closet
- 5 Simmons= Itemized Cost Relating to Claim
- 6 11/20/01 Job Estimate from Acorn Kitchen & Bath for Kitchen Cabinets
- 7 Photo of Cabinets installed in the Lower Level
- 8 Copy of Contractors Invoice of \$4,660.00 from Total House Calls for Labor
- 9 Photo showing shelving between poles

Respondent offered no additional exhibits for consideration at the hearing.

FINDINGS OF FACT

Respondent has been a licensed builder since about 1997. To seek jobs, Mr. Neighbors and his family deposit single-sheet flyers throughout neighborhoods advertising his business. Mr. Neighbors also subcontracts his services to other builders when they require trades that he can perform. In this case, the Mr. and Mrs. Simmons contacted Respondent after receiving one of the flyers and asked that someone come out to provide an estimate for basement remodeling at their Rochester Hills home. In response, Mr. Neighbors went out "Thursday after 3:00 pm" and spent roughly an hour going over the proposed project.

Following Mr. Neighbors' assessment of the project, he provided an undated estimate (Petitioner Exhibit 1, page 1) of \$18,695 to perform certain basement improvements.

The notation "Thursday after 3:00 pm", apparently refers to the day that Mr. Neighbors scheduled to go out and provide the estimate. Because the estimate was about \$9,000 less than the next lowest estimate that the Simmons had obtained, they selected Respondent and, apparently on the same day, Thursday, July 5, 2001, provided Respondent a \$9,000.00

deposit for finished basement (See Petitioner Exhibit 1, page 2). Mrs. Simmons signed the estimate where it calls for "Customer Signature@. Mr. Neighbors signed the receipt dated 7/5/2001.

While Mr. Neighbors insists that the estimate is not a contract, clearly Respondent had a contract (oral or written) with the Simmons to perform finished basement remodeling for \$18,695.00. The job consisted of Respondent constructing a kitchen and bathroom area in the basement (later amended to exclude a shower and removal of existing plumbing), cedar closet storage, a dry bar area, a drop ceiling (later changed to a drywall ceiling with recessed lights) and glass block windows. In reaching the price, Mr. Neighbors considered the size of the basement area, labor, time, some materials, required helpers and more. While the terms were not all reduced to writing, it is clear that the Simmons were responsible for the purchase of many materials and appliances that Respondent would install. This is all despite Mr. Neighbors' assertion that he was to principally act as a consultant, though he would bring the project up through the drywall stage¹. Mr. Neighbors worked sporadically over the summer of 2001 on the project. Respondent was paid periodically by the Simmons as work progressed. On his last visit to perform work, he installed ceramic tile at the basement bath & kitchen, provided by Simmons. He promised to return to complete additional work, but never returned. The Simmons contacted him numerous times in an effort to get the project completed. After it became clear that Respondent would not return, the

¹ This is contrary to Respondent's notation, "Deposit for Finished basement@ on the \$9,000.00 receipt.

Simmons contracted with others to have the work completed. Because the complete terms of the agreement between Respondent and the Simmons were not reduced to writing, no one can identify what the complete agreement consisted of.

Apparently, what remained to be done included (a) completing drywall in kitchen, bathroom and closet (See Petitioner Exhibits 3 and 4), install a toilet and sink in the bathroom, and constructing the cedar closet, kitchen cabinets and the bar. In addition, certain items had to be redone. Respondent was paid in full by the Simmons.

In February 2002, the Simmons= filed their Statement of Complaint against Respondent. As part of Petitioner-s usual process, Complaint Specialist Sara E. Hernandez issued a Notice to Respond (Petitioner Exhibit 2) to Respondent, requiring a response to the Simmons= Statement of Complaint within 15 days. No oral or written response was received by Petitioner, nor was the original mailing returned to Petitioner as undeliverable.

The Simmons= hired James Johnson of Total House Calls to finish the drywall, bathroom, cedar closet for \$4,660.00 labor after Respondent left the project (See Petitioner Exhibit 8). They also hired a gentleman to construct the bar at a cost of \$1,200.00. In addition, they purchased cabinets from Acorn Kitchen Baths for \$1,809.87 (See Petitioner Exhibit 6) and paid \$65.00 for debris removal. While they may have incurred other expenses, these are the only expenses attributable to Respondent.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) ' 60.48, page 230. The

burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent. 1990 AACRS, R 339.1763.

Violation of Section 604(c) of the Code

By this charge, Petitioner asserts that Respondent violated Builder Rule 338.1551(2), thereby violating Section 604(c) of the Code. Builder Rule 338.1551(2) sanctions a builder or contractor who fails to submit a reply to a complaint in a timely manner.

In this case, Petitioner presented sufficient evidence that Respondent was sent a Notice to Respond to the Statement of Complaint within 15 days and that he did not respond. Respondent's argument that maybe the notice got lost in the mail and that he would have responded if he had received the notice is not persuasive. It is concluded that Respondent's failure to timely submit a response to the Statement of Complaint constitutes a violation of Builder Rule 338.1551(2).

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Section 604(c) of the Code.

Violation of Section 2411(2)(a) of the Code By this charge, Petitioner asserts that Respondent abandoned the Simmons construction project without any legal excuse.

Respondent's position that there was no "contract" is inconsistent with the evidence. Respondent, a licensed builder, solicited work and struck an agreement with the Simmons to perform home improvement for \$18,695.00, was paid as work was performed, and abandoned the project before the work was completed. Consistent with Builder Rule 33,

builder/contractor licensees are required to place agreements in writing and assure that the terms are adequately set forth.

Rule 33. (1) A builder or contractor shall deliver to his customer fully executed copies of all agreements between them, including specifications, and when construction is involved, both plans and specifications. He shall make certain that all such writings are definite in their terms and sufficient to express the intent of the parties with regard to the transaction, the type and amount of work to be done, and the type and quality of materials to be used, and the parties shall adhere to applicable building, housing, and zoning regulations. 1979 Administrative Code, Rule 338.1533(1)

Respondent's failure to complete the project as described constitutes the abandonment of a construction project without any legal excuse.

Accordingly, Petitioner has proven, by a preponderance of the evidence, that Respondent violated Section 2411(2)(a) of the Code.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent violated Builder Rule 338.1551(2) and Sections 604(c) and 2411(2)(a) of the Code as described in this Hearing Report. Petitioner made no recommendation for sanction.

It is recommended that the Board include the following as sanctions in this matter:

1. Payment of a civil fine in the amount of \$3,000.00.

2. Payment of restitution to Paul and Janice Simmons in the amount of \$7,734.87, representing the estimated cost to complete the project.

3. In the event the civil fine and restitution have not been paid within 60 days following the issuance of a final order, then all Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine and restitution have been paid.

Gregory Holiday
Administrative Law Judge