

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

In the matter of

Docket No. 2000-1063

Bureau of Commercial Services,
Petitioner

Agency No. 21-99-5806-00

v

Agency: Bureau of Commercial
Services

Kirk L. Scheuneman
dba Advanced Builders & Home
Improvement,
Respondent

Case Type: Sanction

_____ /

**Issued and entered
this 7th day of February, 2001
by Robert H. Mourning
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter was commenced with the issuance of a Notice of Hearing on a Formal Complaint, dated March 27, 2000, alleging violations by Kirk L. Scheuneman d/b/a Advanced Builders and Home Improvement (Respondent) of the Occupational Code of 1980, as amended, 1980 PA 299 (Code), MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* The Notice of Hearing scheduled the contested case hearing to commence at 9:30 a.m., June 8, 2000, in the hearing rooms of the Department of Consumer and Industry Services (Department), Bureau of Hearings, Northbrook Office Park, 2942 Fuller Avenue, Grand

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Rapids, Michigan. After granting several adjournments for the parties, a hearing was commenced and concluded on September 19, 2000.

At the hearing, Attorney Thomas Schultz, appeared on behalf of the Respondent. Attorney Tracey L. Hampton appeared on behalf of the Bureau of Commercial Services (Petitioner).

The following exhibits offered by the Petitioner were admitted into evidence:

Exhibit 1: Building Inspection Report, May 28, 1999.

Exhibit 2: Itemized Repairs.

Exhibit 3 A: Picture

Exhibit 3 B: Picture

Exhibit 3 C: Pictures(7)

Exhibit 3 D: Picture

Exhibit 3 E: Picture

Exhibit 3 F: Picture

Exhibit 3 G: Picture

Exhibit 3 H: Picture

Exhibit 4: Certificate of Mailing, December 17, 1999.

Exhibit 5: Certificate of Mailing, February 4, 2000.

The following exhibits offered by the Respondent were admitted into evidence:

Exhibit A: Proposal, March 8, 1999.

Exhibit B: Proposal by Roof Masters, Inc., February 26, 1999.

Exhibit C: Reinspection of Roof by Mike Stolk.

Exhibit D: Respondent's Answer to the Complaint, January 4, 2000.

The Petitioner offered the testimony of Leonard Siudyla, a building inspector for the City of Grand Rapids; Bridgette (Hipp) Cleveringa, homeowner; and Patrick Hipp, father of Ms. Cleveringa.

The Respondent testified on his own behalf.

ISSUES AND APPLICABLE LAW

The specific issues are whether the Respondent violated Sections 604(c) and (g) and 2411(2)(m) of the Code and Rule 51(4) of the Residential Builders' and Maintenance and Alteration Contractors' Board, promulgated under 1979 AC, R 338.1551(4).

Section 604(c) and (g) of the Code provides that:

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.

Section 2411(2)(m) provides that:

* * *

(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.

Rule 51(4) provides that:

- (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.

Section 903.6 of CABO 1995 provides:

903.6 Side wall flashing. Flashing against a vertical sidewall shall be by the step-flashing method.

Exception: Other methods shall be permitted when installed in accordance with the shingle manufacturer's printed instructions.

FINDINGS OF FACT

1. In approximately February 1999, Barbara Kuiper, as Seller and Bridgette (Hipp) Cleveringa and Jeremy Cleveringa, as Buyer, executed a purchase agreement for a residential home located at 450 Kenwood, N.E., Grand Rapids, Michigan. The real estate agent for the Seller was Mike Swierbert.

2. As part of the purchase agreement, the Seller was obligated to re-roof a flat roof, the house and the garage before the date of closing. Roof Masters, Inc. was hired to replace the flat roof at a price of \$660.00. (Exhibit B). The proposal provided: "Material and labor to install a fully adhered rubber roof system over the existing flat roof on rear of house with new metal on perimeter." The Respondent was hired to re-roof the house and garage. (Exhibit A). The purchase agreement allocated the cost of the flat roof to the Seller

and the cost of the roof on the house and the garage to the Buyer.

3. At the time of the closing between the Seller and the Buyer, the flat roof had not been completed and Bridgette Cleveringa did not want to complete the closing. Mike Swierbert called the Respondent and asked him to re-roof the flat roof at the price of \$660.00 and delete the garage from his agreement. The Respondent agreed to the changes in his contract. The Buyer was not privy to this conversation or the agreement struck by Mr. Swierbert and the Respondent. It is not clear from the evidence in the record if the cost of the flat roof was paid by the Seller to the Buyer at the time of the closing.

4. In re-roofing the flat roof on the back of the house, the Respondent did not use a single, rubberized membrane, but installed "torch" down material with multiple seams. The Respondent was not aware of the contents of the Roof Masters, Inc.'s proposal until after he had finished re-roofing the flat roof.

5. In approximately June 1999, the Respondent completed the re-roofing of the flat roof and the house. Ms. Cleveringa paid the Respondent in the amount of \$3,860.00 for both roofs.

6. Shortly thereafter, Patrick Hipp had an opportunity to inspect the Respondent's roofing job. Mr. Hipp and his boss, Mike Stolk, who have done roofing jobs as part-time employment, used ladders to inspect the flat roof and the steep part of the roof on the house. Their findings are recorded in a two-page report that was eventually shared with the Respondent and with the building inspector. (Exhibit C).

7. On May 26, 1999, Leonard Siudyla, a building inspector for the City of Grand Rapids, did an inspection of the Respondent's roofing job at 450 Kenwood N.E. Mr. Siudyla had a copy of the complaint filed by the homeowners and the two-page report prepared by Mr. Hipp and Mr. Stolk.

8. Mr. Siudyla did not have a ladder and did not inspect the steep part of the roof on the house. In his inspection report, Mr. Siudyla cites a violation of Section 903.6 of CABO 1995 and poor workmanship violations by the Respondent. (Exhibit 1).

9. According to Mr. Siudyla, where the roof butted against a vertical wall, new step-flashing had not been installed and the existing step-flashing had not been properly reapplied or woven between the shingles. Mr. Siudyla made this conclusion based on viewing a portion of the roof.

10. From the attic, Mr. Siudyla determined that the Respondent had applied shingles around the soil stack without sheathing underneath.

11. The drip edge on the southwest side of the house was not properly installed. Shingles were lapped over the top of the drip edge. Mr. Hipp found that the drip edge was installed over areas where there was no sheathing for nailing.

12. The aluminum J-channels on the sides of the dormers were bent and damaged.

13. The building inspector determined that the flat roof was not installed properly. There was a soft spot beneath the covering on the flat roof. The roofing was not properly installed where it turned up against the house, under the door, along the drop edge

and under the guard rails.

14. It took the homeowner approximately two months to arrange a meeting with the Respondent to discuss the problems with his roofing job.

15. The Respondent returned to the residential home and made some repairs to the roofing job.

16. From the roof, the Respondent inspected the soil stack but could not find any problem with the sheathing in this area of the roof as described by the building inspector.

17. The Respondent replaced dry-rotted boards and attached the drip edge with nails.

18. The Respondent claims that bad boards were replaced on both the flat roof and the roof on the house.

19. The Respondent has installed the Firestone material ("torch" down rubber) for the last 15 to 20 years. He has installed 10 to 20 such flat roofs per year. Firestone does not provide a warranty for residential homes. Over the last five years, the Respondent has installed Firestone material on several flat roofs for Mike Swierbert.

20. The homeowner provided a list of repairs and itemized costs in the amount of \$2,327.00:

- a. Re-step flash (4) vertical walls on main dormer, \$1,024.00;
- b. Re-step flash (4) eave returns, \$240.00;
- c. Re-step flash from gable porch roof, \$105.00;
- d. Replace damaged or missing J-channel, \$438.00;

- e. Properly re-flash chimney, \$475.00; and
- f. Allowance for shingles if they have to be replaced, \$45.00.

(Exhibit 2).

CONCLUSIONS OF LAW

The principles that govern judicial proceedings apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed) § 60.48, p 230. The burden of proof is on the Petitioner to prove, by a preponderance of the evidence, the matters alleged in the Formal Complaint. 1990 AACS, R 339.1763.

Violation of Section 2411(2)(m) of the Code

In a construction case, the building inspector is generally given a great deal of deference by the Administrative Law Judge. However, in this case, the testimony of Mr. Siudyla is somewhat suspect since he testified that, once a homeowner complains to the City of Grand Rapids, he feels pressure to find violations. If there is doubt as to whether the licensee has violated the Code, the building inspector finds there is a violation.

Moreover, Mr. Siudyla testified that he did not have a ladder and did not inspect the steep part of the roof on the house from the exterior. The homeowners provided him with a list of items to inspect, but many of the items were inspected from ground level by the inspector.

Among other things, Mr. Siudyla cited the Respondent for workmanship violations involving the soil stack, drip edge and flat roof in his building inspection report dated May 26, 1999. The Respondent testified that the drip edge and the soil stacks were corrected by him. There is no evidence in the record to refute the Respondent's claim. Therefore, these

two items are dismissed from the Formal Complaint.

Regarding the flat roof, the main workmanship problem is whether the “torch” down material was properly installed by the Petitioner. Whether the Respondent installed the correct rubberized material under an agreement between the Seller and Roof Masters, Inc. is not for the Administrative Law Judge to decide. Further, neither the building inspector nor Mr. Hipp possesses the expertise to testify about the proper installation of the “torch” down material used by the Respondent. The Administrative Law Judge is left without an expert witness that can testify about the correct installation of “torch” down material. Therefore, this item is dismissed from the Formal Complaint.

Regarding the J-channels and the step-flashing, cited in the Building Inspection Report, the Petitioner has proven, by a preponderance of the evidence, that the Respondent committed workmanship violations. The testimony of witnesses and the pictures admitted to the record substantiate the workmanship problems. The Respondent testified that the step-flashing was properly installed on the roof and that the J-channels were damaged or bent because he had to remove three layers of shingles. The Respondent believes that any replacement of the J-channels and step-flashing were not part of the roofing contract.

The Administrative Law Judge understands the position of the Respondent. However, after roofing buildings for 15 to 20 years, the Respondent should have anticipated this problem with a roof with three layers of shingles and should have provided for this potential cost in his contract with the homeowners. The J-channels and the step-flashing are important to the integrity of the roof. Some of the pictures admitted to the record show “sloppy

work” by the Respondent on this issue.

Accordingly, the Petitioner has proven, by a preponderance of the evidence, that the Respondent ~~has violated Section 604(a)(2)(g) of the Code and Rule 51(4)~~ violated Section 604(c) of the Code and Rule 51(4).

In this case, the Petitioner has not presented sufficient evidence that the Respondent is incompetent under Section 604(g). One roofing job with workmanship violations does not relegate the Respondent, a roofer for 15 to 20 years, to the category of an incompetent licensee.

However, the Respondent did violate Rule 51(4) in handling the workmanship problems in this roofing job. Because of inclement weather in the state of Michigan, time is generally of the essence in any roofing project. The homeowners promptly paid the Respondent for his roofing job. As a corollary, the homeowners should have received prompt attention from the Respondent about their legitimate concerns regarding workmanship issues. In light of all the circumstances, two months is too long for the homeowners to wait for the Respondent’s cooperation.

Accordingly, the Petitioner has proven, by a preponderance of the evidence, that the Respondent has violated Section 604(c) of the Code and Rule 51(4). Section 604(g) is dismissed from the Formal Complaint based on insufficient evidence.

Restitution

The Petitioner has offered evidence that shows the amount of money paid to a second roofer on November 17, 1999, to the correct alleged workmanship violations

created by the Respondent. (Exhibit 2). The homeowners paid the second roofer \$2,327.00. That amount seems unreasonably high for the limited work completed by the second roofer. However, Exhibit 2 is sufficient proof to provide the homeowners with partial restitution. Accordingly, restitution is recommended in the amount of \$1,750.00 to the homeowners.

SUMMARY AND ORDER

1. The Administrative Law Judge recommends that the Board find and conclude that the Respondent violated Sections 604(c) and 2411(2)(m) of the Code and Rule 51(4).

2. The preponderance of the evidence presented in this case establishes that the Respondent has not violated Section 604(g) of the Code. ACCORDINGLY, IT IS HEREBY ORDERED THAT, any violation of Section 604(g) in the Formal Complaint is Dismissed with Prejudice.

3. The Respondent be assessed a civil fine in the amount of \$500.00.

4. The Respondent shall make restitution to Bridgette and Jeremy Cleveringa in the amount of \$1,750.00.

5. In the event that the civil fine and restitution has not been paid within 60 days following the issuance of a final order of the Board, the Respondent's Article 24 licenses should be suspended. No new or renewal licenses shall be issued until the civil fine and the restitution are paid in full.

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Robert H. Mourning
Administrative Law Judge