

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

In the matter of

Docket No. 2000-1782

Bureau of Commercial Services,
Petitioner

Agency No. 21-00-0494-00

Agency Name: Bureau of Commercial
Services

v
H. Jean Williams
d/b/a Hercy's Construction Company,
Respondent

Case Type: Sanction

_____ /

Issued and entered
this 29th day of November 2000
by Reneé A. Ozburn
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with a Notice of Hearing (Notice) upon a Formal Complaint (Complaint) dated June 28, 2000, alleging that H. Jean Williams, d/b/a Hercy's Construction Company (Respondent), violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*, (Code). On November 13, 2000, a hearing was held in hearing rooms of the Department of Consumer and Industry Services (Department), located in Okemos, Michigan.

The Notice and Complaint were mailed to Respondent at the address of 1314 East

Princeton Avenue, Flint, Michigan 48505, the last known address of record for

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the Respondent. The Notice informs all parties to a case that if they fail to appear at a hearing as scheduled, a default may be entered pursuant to section 78 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.271 *et seq.*; MSA 3.560(101) *et seq.*, (APA).

On November 13, 2000, Hal Ziegler appeared on behalf of the Bureau of Commercial Services (Petitioner). Neither Respondent, nor an attorney on behalf of Respondent, appeared for the hearing. Mr. Ziegler requested that the Respondent be held in default pursuant to section 78 of the APA. The undersigned Administrative Law Judge granted the motion for default. A default judgement constitutes a decision that all allegations contained in the June 28, 2000 Complaint, are deemed to be true.

ISSUES AND APPLICABLE LAW

The Complaint in this matter alleges that the Respondent violated Code section 2411(2)(c) which states:

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:
(c) Failure to account for or remit money coming into the person's possession which belongs to others.

FINDINGS OF FACT

1. At all times relevant to the Complaint in this matter, the Respondent has been licensed as a residential builder under the Code.
2. At all times relevant to the Complaint in this matter, the Respondent had a

place of business located at 1314 East Princeton Avenue, Flint, in the County of Genesee, Michigan.

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3. On or about June 16, 1999, Respondent entered into a contract with Shirley D. Tucker to perform services regulated by the Code.

4. On or about August 20, 1999, Respondent entered into an agreement with Shirley Tucker which provided that Respondent would return the deposit made by Ms. Tucker if she was unable to obtain financing.

5. Shirley Tucker was denied financing.

6. Respondent has failed to return the deposit money paid by Shirley Tucker in accordance with their August 20, 1999 agreement, contrary to the provisions of Code section 2411(2)(c).

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that the Respondent violated the Code as alleged and that grounds exist for imposition of sanctions.

Having granted a default on behalf of the Petitioner, the undersigned Administrative Law Judge concludes that the Petitioner has established, by a preponderance of the evidence, that the Respondent violated Code section 2411(2)(c), as alleged in the Complaint issued on June 28, 1999.

RECOMMENDED SANCTIONS

The Petitioner submitted as Exhibit 1, the contract between Respondent and Shirley Tucker. Exhibit 1 indicates that Ms. Tucker paid Respondent \$8,500 as a down payment on their contract. The Petitioner recommends restitution to Ms. Tucker in the

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amount of her down payment. Further, the Petitioner recommends that Respondent be fined \$1,500 for violation of the Code.

The undersigned Administrative Law Judge concurs with the Petitioner's recommended sanctions and proposes that the Respondent be ordered to pay restitution and fines as follows:

- 1) Restitution to Shirley D. Tucker in the amount of \$8,500.00.
- 2) A civil fine of \$1,000.00
- 3) In the event that the restitution and fine are not paid within 60 days following issuance of a final order, Respondent's Article 24 license(s) should be suspended.

Renee A. Ozburn
Administrative Law Judge