

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

In the matter of

Docket No. 2000-1785

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-99-4343-00

**Agency Name: Bureau of Commercial
Services**

v

Case Type: Sanction

**William Roger Horton
d/b/a Horton Roofing & Siding
Respondent**

_____ /

**Issued and entered
this 30th 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 30, 2000, alleging that William Roger Horton, d/b/a Horton Roofing & Siding (Respondent), violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*, (Code). The Notice and Complaint were mailed to the Respondent at the address of 1325 Florence, Niles, Michigan 49120, which is the last known address of record for 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 **Docket No. 2000-1785**
Page 2

Procedures Act, 1969 PA 306, as amended, MCL 24.271 *et seq.*; MSA 3.560(101) *et seq.*, (APA). On November 20, 2000, a hearing was held in hearing rooms of the Department of Consumer and Industry Services (Department), located in Okemos, Michigan. Attorney Tracey Hampton was present and ready to proceed on behalf of the Bureau of Commercial Services (Petitioner). Neither Respondent, nor an attorney on his behalf, appeared for the hearing. Attorney Hampton motioned for the Respondent to be defaulted 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 30, 2000 Complaint, are deemed to be true.

ISSUES AND APPLICABLE LAW

The Complaint in this matter alleges that the Respondent violated Code sections 604(c) and 2411(2)(m), and rule 21(3) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, promulgated thereunder, being 1979 AC, R 338.1521(3), which state:

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

Rule 21(3) - An applicant operating under an assumed name or d.b.a. shall submit a certified copy of the assumed name certificate. An applicant operating as a co-partnership shall submit a certified copy of the certificate of co-partnership. An applicant operating as a corporation

Docket No. 2000-1785

Page 3

shall submit a copy of the articles of incorporation and the latest corporation annual report, if any, and be in good standing as a corporation.

FINDINGS OF FACT

1. At all times relevant to the Complaint in this matter, the Respondent has been licensed as a maintenance and alteration contractor under the Code.

2. At all times relevant to the Complaint in this matter, the Respondent had a place of business located at 1325 Florence, Niles, in the County of Berrien, Michigan.

3. On or about April 22, 1998, the Respondent entered into a contract with Bob Staszewski to perform services regulated by the Code.

4. Respondent has failed to perform the requirements of the contract in a workmanlike manner, contrary to Code section 2411(2)(m).

5. Respondent failed to file an assumed name or d/b/a certificate with the Commercial Licensing Division of the Department, or its predecessor, before he commenced doing business as Tip Top Home Improvement, contrary to rule 21(3).

6. By violating rule 21(3), the Respondent has violated a rule of conduct in practicing an occupation, contrary to section 604(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 imposing sanctions.

Docket No. 2000-1785

Page 4

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 sections 2411(2)(m), 604(c) and rule 21(3), as alleged in the Complaint issued on June 30, 2000.

RECOMMENDED SANCTIONS

The Petitioner submitted as Exhibit 1 a notarized statement of the cost of repairs necessitated by the Respondent's failure to perform his contract. Exhibit 2 is a canceled check for part of those repairs. The Petitioner recommends restitution to Mr. Staszewski in the amount of \$2,071. Further, the Petitioner recommends that Respondent be fined \$1,000 for violation of the Code.

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

- 1) Restitution to Bob Staszewski in the amount of \$2,071.00.
- 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