

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

In the matter of

Docket No. 2000-1802

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-99-5796-00

v

**Agency: Bureau of Commercial
Services**

**Perception Development Company,
Inc.
Dave E. Balcom, Q.O.,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 27th day of July, 2001
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 July 28, 2000, alleging that Perception Development Company, Inc., Dave Balcom, Q.O., (Respondent), violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*, (Code). There was one Order for Continuance and two Orders Granting Adjournment issued after the Notice. The last Order Granting Adjournment (Order) was issued on April 12, 2001. This Order scheduled a hearing for 9:00 a.m. on July 13, 2001, at the Department of Consumer and Industry Services, 2501 Woodlake Circle, 1st Floor, Okemos, Michigan. The Order was mailed to the

Respondent at the addresses of 403 South Clinton, Grand Ledge, Michigan 48837, and 414 South Clinton, Grand Ledge, Michigan 48837. These were the last two addresses of record for the Respondent. The Order was also mailed to Respondent's attorney of record, Donald Lawrence, Jr., at the address of Hubbard, Fox, Thomas, White & Bengston, P.C., 5801 West Michigan Avenue, P.O. Box 80857, Lansing, Michigan 48908.

The Notice and Complaint inform 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 July 13, 2001, Attorney Lynn Morrison was present and ready to proceed on behalf of the Bureau of Commercial Services (Petitioner). Also present, and ready to appear as a witness for the Petitioner, was Mr. Ronald Bukovcik. Neither Respondent, nor his attorney of record, appeared for the hearing.

Attorney Morrison 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 of the allegations contained in the July 28, 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), 2411(2)(c) & (l), and Rule 35 of the Residential Builders and Maintenance and Contractors Board Rules, promulgated thereunder, being 1979 AC, R 338.1535, 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.

Section 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.

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgements or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

Rule 35 - A licensee, upon written demand and notice by the department, shall within 30 days submit a current, accurate and sworn financial statement showing his current financial status. The demand for a financial statement may be based upon an unsatisfied judgement, a lien filed against the licensee or the department's reasonable belief that the licensee does not have the ability to perform. The written demand may be served personally on the licensee or by certified mail sent to his last known business address on file with the department. A request for an extension of time shall be in writing and may be granted for good and sufficient cause.

SUMMARY OF EXHIBITS

Petitioner's Exhibit 1 - Correspondence dated April 3, 2000, from the Department to Respondent, requesting an accounting of monies received and disbursed.

Petitioner's Exhibit 2 - Invoices and receipts for legal services incurred by Ronald and Philis Bukovcik.

FINDINGS OF FACT

1. At all times relevant to the Complaint, Perception Development Company, Inc., Dave E. Balcom, Qualifying Officer, was licensed as a residential builder under the Code.

2. At all times relevant to the Complaint, Respondent had a place of business at 403 S. Clinton, Grand Ledge, in the County of Eaton, Michigan.

3. Respondent entered into a contract to perform services regulated by the Code with Ronald and Philis Bukovcik on or about December 24, 1998.

4. The Respondent has failed to provide a current financial statement when requested to do so by the Department, contrary to 1979 AC, R 338.1535 and Code Section 604(c).

5. Respondent failed to satisfy a lien filed on August 5, 1999, by Mark Woodman Plumbing & Heating, Inc., in the County of Clinton, Michigan, on real property commonly known as 16300 Forest Hill Road, Grand Ledge, Michigan, contrary to Code Section 2411(2)(l).

6. Respondent failed to satisfy a lien filed on August 12, 1999, by John A. Iszler Concrete Contractor, Inc., in the County of Clinton, Michigan, on real property commonly known as 16300 Forest Hill Road, Grand Ledge, Michigan, contrary to Code Section 2411(2)(l).

7. Respondent failed to satisfy a lien filed on August 23, 1999, by Dennis Duffey, in the County of Clinton, Michigan, on real property commonly known as 16300 Forest Hill Road, Grand Ledge, Michigan, contrary to Code Section 2411(2)(l).

8. Respondent failed to satisfy a lien filed on September 16, 1999, by Craig W. Courter d/b/a Craig Electric, in the County of Clinton, Michigan, on real property commonly known as 16300 Forest Hill Road, Grand Ledge, Michigan, contrary to Code Section 2411(2)(l).

9. Respondent failed to satisfy a lien filed on September 16, 1999, by Thomas L. Lingemann d/b/a Lingemann Construction, in the County of Clinton, Michigan, on real property commonly known as 16300 Forest Hill Road, Grand Ledge, Michigan, contrary to Code Section 2411(2)(l).

10. Respondent failed to pay money to subcontractors with whom Respondent had contracted to perform services required by the contracts, contrary to 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 evidence, that the Respondent violated the Code as alleged and that grounds exist for imposing 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 Sections 604(c), and 2411(2)(c) and (l), and Rule 35, as alleged in the Complaint issued on July 28, 2000.

RECOMMENDED SANCTIONS

Petitioner's Exhibit 2 establishes that Ronald and Philis Bukovcik expended \$4,579.00 in legal fees to have Respondent's unsatisfied liens removed from their property. Further, the Petitioner recommended that the Respondent be fined \$5,000.00 for failure to satisfy liens owed to five subcontractors totaling \$43,529.99. Therefore, the undersigned Administrative Law Judge concurs with the following sanctions recommended by Petitioner:

- 1) The Respondent should make restitution to Ronald and Philis Bukovcik in the amount of \$4,579.00.
- 2) The Respondent should pay a civil fine of \$5,000.00.
- 3) The Respondent's license to practice as a residential builder should be revoked. Further, the Respondent should not be eligible for reinstatement of his license until he provides a financial accounting of monies received and disbursed on the Bukovcik project, and a current financial statement.

Renee A. Ozburn
Administrative Law Judge