

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

In the matter of

Docket No. 2000-317

Bureau of Commercial Services,
Petitioner

Agency No. 21-98-4703-00

v

Agency: Bureau of Commercial
Services

James M. Graham
dba JM Graham Company,
Respondent

Case Type: Sanction

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**Issued and entered
this 26th day of March, 2002
by Robert H. Mourning
Administrative Law Judge**

REMAND HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuance of a Notice of Remand Hearing dated January 14, 2002, scheduling a contested case hearing for March 15, 2002. The Notice of Remand Hearing was issued pursuant to a Formal Complaint alleging that the Respondent, James M. Graham, violated the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.2401-2412.

Since January 31, 2000, this matter has been scheduled for hearing and, later dismissed by the Administrative Law Judge on at least two separate occasions. In both instances, the parties did not object to the Order for Dismissal. Contrary to the Petitioner's comments in its Request for Hearing filed on December 6, 2001, the last

Order for Dismissal was issued and entered because the Petitioner could not find the building inspector, Dennis D. Williams, from the October 15, 1998, building inspection report.

At the hearing, Attorney Lisa Funkhouser appeared on behalf of the Petitioner, Bureau of Commercial Services. Attorney George C. Bush appeared on behalf of the Respondent.

Before taking testimony in the hearing, the parties settled the case on the record pursuant to Section 78(2) of the Administrative Procedures Act (APA), 1969 PA 306, as amended, MCL 24.278(2).

Further, Section 78(2) of the APA states, in pertinent part:

- (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement...default . . .

The Petitioner and the Respondent agreed that the Respondent would admit liability to paragraph 10 of the Formal Complaint and pay a civil fine in the amount of \$500.00, that the remaining alleged violations contained in the Formal Complaint would be dismissed, and that the Respondent would not pay restitution to Marcia Buchanan.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether the Respondent violated the Code. The specific issue in this case is whether the Respondent violated the following Section of the Code: Section 604(c). This Section reads in pertinent part:

Section 604 (c) 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.

* * *

FINDINGS OF FACT

1. At all times relevant to the Formal Complaint, the Respondent has been licensed as a residential builder under the Code. He has not been previously sanctioned by the Board.

2. On or about October 17, 1996, the Respondent entered into a contract with Marcia L. Buchanan in her representative capacity to perform services regulated by the Code. Ms. Buchanan acted on her mother's behalf under the authority of a power of attorney in contracting with the Respondent. Ms. Buchanan's mother is deceased. (Exhibits A and B).

3. The Petitioner has not been able to locate the building inspector, Dennis D. Williams, to give testimony in this case.

4. The Respondent admits that he has violated a rule of conduct in practicing an occupation.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice, §60.48, at 230 (2d ed. 1994). The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist, 428 Mich 248, 406 NW2d 825 (1987).

Based upon the facts described herein, the Petitioner has proven, by a preponderance of the evidence, that the Respondent has violated a rule of conduct in practicing an occupation, contrary to Section 604(c) of the Code. **SUMMARY AND ORDER**

1. The Administrative Law Judge recommends that:
 - (a) The Board finds and concludes that the Respondent violated Section 604(c) of the Code.
 - (b) The Respondent is assessed a civil fine in the amount of \$500.00.

- (c) In the event that the civil fine has not been paid within 60 days following the issuance of a final order by the Board, the Respondent's Article 24 licenses should be suspended. No Article 24 license will be renewed nor will any new Article 24 license be issued until the civil fine is paid in full.
2. The Petitioner has agreed to the dismissal of the remaining alleged violations contained in the Formal Complaint, being paragraphs 6 through 9. Accordingly, it is hereby ordered that, any alleged violations contained in the foregoing paragraphs, are dismissed from the Formal Complaint with prejudice.

Robert H. Mourning
Administrative Law Judge