

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

In the matter of

Docket No. 2000-714

Bureau of Commercial Services,
Petitioner

Agency No. 21-99-2843-00

Agency: BCS

v

G. F. Binder Building Company,
Gary Binder, Q.O.,
Respondent

Case Type: Sanction

**Issued and entered
this 11th day of August, 2000
by Erick Williams
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuance of a Notice of Hearing dated March 15, 2000, scheduling a contested case hearing for June 2, 2000. The Notice of Hearing was mailed to Respondent's last known address.

Appearances: Paul Milkenbach, appeared on behalf of
Petitioner, Bureau of Commercial Services. Neither

Respondent, G.F. Binder Building, Gary Binder, Q.O., nor an attorney on behalf of Respondent appeared at the hearing.

The Notice of Hearing was issued pursuant to allegations by the Bureau of Commercial Services (Petitioner) that G.F. Binder Building, Gary Binder, Q.O., (Respondent) violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.101 - 605; MSA 18.425(101)-(605) (Code).

The hearing in this matter commenced as scheduled on June 2, 2000. At the hearing, Mr. Milkenbach requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.272; MSA 3.560 (272) (APA), and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

- (1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

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

- B. Except as otherwise provided by law, disposition may be made of a contested case by...default....

The Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint were deemed true.

During the June 2, 2000, hearing, no exhibits were accepted into the record.

During the June 2, 2000, hearing, no other evidence was offered into the record.

No witnesses testified at the hearing.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* (Code).

The specific issues in this case are whether or not the Respondent violated the following Sections of the Code and Rules: Section 2411(2)(m); Section 604(c)(Code); 1979 AC R 338.1551(4)(Rule). Those Sections and Rules state in pertinent part:

Sec. 2411 Complaint; conduct subject to penalty; suspension or revocation of license; violation of §§ 338.3101 to 338.3319 or §§ 408.1057 to 408.1060f.

(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.

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.

R. 338.1551(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.

FINDINGS OF FACT

Based on the record, I make the following findings of fact:

1. On or about October 13, 1996, Respondent entered into a purchase agreement with Michael and Linda Shablis to sell a residential structure which was constructed by and under the license of Respondent which was regulated by the Code.
2. Respondent failed to construct the residential structure in a workmanlike manner.
3. Respondent failed to correct the problem in a timely manner.
4. Respondent violated a rule of conduct in practicing his occupation as a residential builder.

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 violated the following Rules and Sections of the Code:

1. Respondent failed to construct the residential structure in a workmanlike manner violating Section 2411(2)(m) of the Code.
2. Respondent failed to correct the problem in a timely manner violating Rule 338.1551(4).
3. Respondent violated a rule of conduct in practicing his occupation as a residential builder in violation of Section 604(c) of the Code.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, the following recommendations are made by the Administrative Law Judge to the Board:

1. Based upon the above violations of the Code and Rules, a civil fine in the amount of \$1,500.00 be assessed against Respondent.
2. Any and all licenses under the jurisdiction of the Code held by Respondent be suspended until such time as the fine has been paid in full.

Erick Williams
Administrative Law Judge