

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

In the matter of

Docket No. 2001-1193

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-3878-00

v

**Agency: Bureau of Commercial
Services**

**Lonnie Lee Gray
d/b/a Lonnie Gray Builder,
Respondent**

Case Type: Sanction

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**Issued and entered
this 5th 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 Hearing dated July 13, 2001, scheduling a contested case hearing for September 12, 2001. The Notice of Hearing was issued pursuant to a Formal Complaint alleging that the Respondent, Lonnie Lee Gray, violated the Occupational Code (Code), 1980 PA 299, as amended, MCL 339.2401-2412.

Before the hearing on September 12, 2001, the parties settled the issues in this case. On September 12, 2001, the Administrative Law Judge issued and entered an Order for Dismissal. According to the Petitioner, Bureau of Commercial Services, the terms and conditions of the settlement agreement were not fully executed by the Respondent. Therefore, on October 23, 2001, the Petitioner requested that the above matter be rescheduled for

hearing. On December 3, 2001, a Notice of Remand Hearing was issued scheduling a contested case hearing for January 25, 2002. The Notice of Remand Hearing was mailed to the Respondent's last known address. Following an adjournment of the hearing, a hearing was held on February 25, 2002.

Attorney Tracey Hampton appeared on behalf of the Petitioner. The Respondent appeared on his own behalf at the hearing.

Before taking testimony in the hearing, Attorney Hampton and the Respondent 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 paragraphs 4 and 7 of the Formal Complaint and pay a civil fine in the amount of \$750.00, that paragraphs 5 and 6 would be dismissed from the Formal Complaint, and that the Respondent would pay restitution to Glenn W. Burch in the amount of \$300.00 for the cost of grading of the area (30' x 40') used for the construction project by the Respondent.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether the Respondent violated the Code.

The specific issues in this case are whether the Respondent violated the following

Sections of the Code: Section 604(c) and Section 2411(2)(a). Those Sections read 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.

* * *

Section 2411(2)(a) provides that:

(2) A licensee or applicant who commits 1 or more of the following shall be subject to the penalties set forth in article 6:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

* * *

FINDINGS OF FACT

1. On or about November 29, 1999, the Respondent entered into a contract with Glenn W. Burch to perform services regulated by the Code.
2. The Respondent, without legal excuse, failed to perform the terms of the contract.
3. The Respondent 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 violated the following Sections of the Code:

1. The Respondent, without legal excuse, failed to perform the terms of the contract, violating Section 2411(2)(a) of the Code.
2. The Respondent has violated a rule of conduct in practicing an occupation, violating 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 Sections 604(c) and 2411(2)(a) of the Code.
 - (b) The Respondent pays restitution to Glenn W. Burch in the amount of \$300.00.

- (c) The Respondent is assessed a civil fine in the amount of \$750.00.
 - (d) In the event that the civil fine and restitution have 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 and restitution are paid in full.
2. The Petitioner has agreed to the dismissal of paragraphs 5 and 6 of the Formal Complaint. Accordingly, it is hereby ordered that, any alleged violation of Section 2411(2)(c) of the Code and 1979 AC, R 338.1551(2) are dismissed from the Formal Complaint with prejudice.

Robert H. Mourning
Administrative Law Judge