

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

In the matter of

Docket No. 2001-1233

Bureau of Commercial Services,
Petitioner

Agency No. 21-00-4928-00

v

Agency: Bureau of Commercial
Services

Roderick Childress,
Respondent

Case Type: Sanction

_____ /

**Issued and entered
this 25th day of October 2001
by Gregory Holiday
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This proceeding was commenced with the issuance of a Notice of Hearing upon a Formal Complaint dated April 25, 2001. Pursuant to Section 92 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.* (APA), Respondent was afforded an opportunity to demonstrate compliance prior to the commencement of formal proceedings. Respondent failed to satisfactorily demonstrate compliance and, as a result, the matter was set and noticed for a formal hearing. The Notice of Hearing scheduled the contested case to commence on Thursday, August 30, 2001 at 9:30 a.m. at the Bureau of Hearings of the Department of Consumer and Industry Services, 1200 Sixth Street, Eighth Floor, Detroit, Michigan. Further, the notice informed Respondent that if Respondent failed to appear at the hearing as scheduled, a default may be entered pursuant

to Section 78 of the APA. The hearing commenced at about 10:05 a.m. Gregory Holiday presided as Administrative Law Judge. Hal Ziegler, Authorized Agent, appeared on behalf of the Bureau of Commercial Services' Enforcement Division of the Department of Consumer and Industry Services (Petitioner). Neither Roderick Childress (Respondent) nor anyone on Respondent's behalf appeared for the hearing.

At the outset of the contested case, it was requested that a default be entered on behalf of Petitioner pursuant to Section 78 of the APA. Section 78 of the APA provides, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested cases by...default..."

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

ISSUES AND APPLICABLE LAW

The general issue presented is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended (Code), MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*, with respect to the practice of a residential builder or residential maintenance and alteration contractor. The specific issues are whether or not Respondent violated Builder Rule 1979 AC, R 338.1551(2) and Sections 604(c) and 2411(2)(a) of the Code, which provide in pertinent part:

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:

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

Rule 51...(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. He shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or a portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

Petitioner offered one exhibit, Petitioner Exhibit 1 - Copies of Money Orders to Roderick Childress totaling \$895.00, for consideration at the hearing.

FINDINGS OF FACT

1. Respondent has, at all relevant times, been licensed as a residential builder under the Code.

2. A Statement of Complaint (Exhibit 1 attached to the Formal Complaint) was filed with the Department by Joyce Guise against Respondent on about September 5, 2000.

3. Respondent entered into a contract to perform services regulated by the Code with Joyce Guise on about April 16, 2000. Joyce Guise paid Respondent \$895.00 as a down payment (See Petitioner Exhibit 1) for the work to be performed (remove and replace a porch).

4. Respondent has, without legal excuse, failed to perform the terms of the contract.

5. Respondent failed to respond to the Statement of Complaint in a timely manner.

6. Respondent was properly served with notice of this proceeding but did not appear for the hearing.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading & Practice (2d ed) § 60.48, page 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent. 1990 AACRS, R 339.1763. Under Section 72 of the APA, there is no need to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School District*, 428 Mich 248; 406 NW2d 825 (1987).

Based upon the facts described herein, Petitioner has established that Respondent violated Builder Rule 339.1551(2) and Sections 604(c) and 2411(2)(a) of the Code, as described in the Formal Complaint.

DECISION AND RECOMMENDED SANCTIONS

It is the decision of this Administrative Law Judge that Respondent has violated Builder Rule 339.1551(2) and Sections 604(c) and 2411(2)(a) of the Code subjecting Respondent to disciplinary sanctions under Section 602 of the Code. Petitioner recommended that sanctions include payment of \$895.00 in restitution to Joyce Guise and payment of a \$1,000.00 civil fine.

It is recommended that the Board include the following as sanctions in this matter:

1. Payment of a civil fine in the amount of \$1,000.00.
2. Payment of restitution to Joyce Guise in the amount of \$895.00.
3. In the event the civil fine and restitution have not been paid within 60 days following the issuance of a final order, then all Article 24 licenses should be suspended and no new or renewal licenses should be issued until the civil fine and restitution have been paid.

Gregory Holiday

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