

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

In the matter of:

**Bureau of Commercial Services,
Petitioner**

Docket No. 2001-1323

Agency No. 15-01-2419-00

v

Agency Name: Bureau of Commercial Services

**John P. Stump,
Respondent**

Case Type: Sanction

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**Issued and entered
this 19th day of November, 2001
by Stephen B. Goldstein
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter was properly noticed for a hearing to commence at 9:00 A.M. on September 14, 2001 in the hearing rooms of the Michigan Department of Consumer and Industry Services, Bureau of Hearings, 2501 Woodlake Circle, 1st Floor, Okemos, Michigan.

Stephen B. Goldstein presided as Administrative Law Judge.

Mr. Michael Homier, Attorney at Law, appeared on behalf of the Bureau of Commercial Services (Petitioner).

Neither John P. Stump (Respondent), nor an attorney on Respondent's behalf appeared at the hearing.

This matter commenced with the filing by the Petitioner of a Formal Complaint dated April 25, 2001 (Complaint) alleging violations by Respondent of Michigan's Occupational Code, 1980 PA 299, as amended (Code).

The original Notice of Hearing dated August 2, 2001 scheduled this matter for a contested case hearing to commence on September 14, 2001 at 9:00 A.M. Furthermore, the Notice informed Respondent that if Respondent failed to appear at the hearing as scheduled, a Default Judgment may be entered pursuant to Section 78 of the Administrative Procedures Act of 1969, as amended (APA), being MCL 24.201, et seq.; MSA 3.560 (101), et seq.

The September 14, 2001 hearing commenced as scheduled. A representative appeared at this hearing on behalf of Petitioner. However, neither Respondent nor an attorney on behalf of Respondent appeared at this hearing.

At the outset of the contested case hearing, Mr. Homier requested that Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the APA. In addition, Mr. Homier requested that a Default be granted on behalf of Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states in pertinent part as follows:

“(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:

“(2) Except as otherwise provided by law, disposition may be made of a contested case by default . . .”

The Judge determined that Petitioner should be allowed to proceed in Respondent's absence, and therefore granted Petitioner's motion for a Default Judgment.

ISSUES AND APPLICABLE LAW

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

The specific issue is whether Respondent violated 1995 AACRS R 339.3236(2)

and MCL 339.604(c); MSA 18.425(604)(c). Those Sections provide as follows:

“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.”

“Rule 236. * * *”

“(2) If such a test or examination results in a finding of the presence of a drug or alcohol or if the boxer or official refuses to submit to a test or refuses or is unable to provide a sample of body fluids for a test, a complaint shall be filed under the procedures of article 5 of the act. If a determination is made that the boxer or official is subject to disciplinary action, the board may impose the following penalties pursuant to the provisions of article 6 of the act:

- (a) For a first violation, suspension for 90 days.**
- (b) For a second violation, a 1-year suspension.**
- (c) For a third violation, revocation of licensure.”**

FINDINGS OF FACT

Respondent was properly served with the Notice of Hearing but did not appear at the time and place scheduled for the hearing. As a result, Respondent was found in default under Section 78(2) of the APA.

Based upon the granting of the Default Judgment, the following facts are found:

1. That, at all times relevant to this Complaint, Respondent was licensed as a professional boxer under the Code.
2. That, on or about March 29, 2001 Respondent performed in a boxing contest, an act regulated by the Code, at the L.A. Globe, Lansing, Michigan.
3. That, on March 29, 2001, Department of Consumer and Industry Services representatives asked Respondent to provide a urine sample prior to the boxing contest.
4. That Respondent was unable to provide a sample of bodily fluid for screening, contrary to 1995 AACS R 339.3236(2).
5. That Respondent has violated a rule of conduct in practicing his occupation, contrary to MCL 339.604(c); MSA 18.425(604)(c).

CONCLUSIONS OF LAW

The principles that govern judicial proceedings apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice, 2nd Ed, Section 60.48, p. 280. The burden of proof is upon the State to prove, by a preponderance of the evidence, that Respondent violated the Code. American Way Service Corporation v Commissioner of Insurance, 113 Mich App 423 (1982). Under Section 72 of the APA, there is no requirement to provide a hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248 (1987).

Having granted a Default Judgment on behalf of Petitioner, it is concluded that the above acts establish that Respondent has violated MCL 339.604(c); MSA 18.425(604)(c), and 1995 AACS R 339.3236(2). Accordingly, Petitioner has established, by a

preponderance of the evidence, that Respondent has violated the above Sections of the Code and Rule as alleged in its complaint.

RECOMMENDED SANCTIONS

Based upon Respondent's violations of the Code and Rule, it is recommended that Respondent be assessed the following sanctions:

- 1. Imposition of a Civil Fine in the amount of \$500.00.**
- 2. Respondent's license be suspended for one (1) year, and that it not be reinstated until the civil fine has been paid in full.**

STEPHEN B. GOLDSTEIN
ADMINISTRATIVE LAW JUDGE