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

In the matter of	**Docket No. 2001-1593**
Bureau of Commercial Services, **Petitioner**	**Agency No. 21-00-6305-00**
v	**Agency: Bureau of Commercial Services**
Baldwin Enterprises, Inc. **A. Phil Baldwin, Q.O.,** **Respondent**	**Case Type: Sanction**

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Issued and entered
this 22nd day of May, 2002
by Erick Williams
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

This is a case under the Occupational Code, MCL 339.101 *et seq.*, and the Administrative Procedures Act, MCL 24.201 *et seq.* Mia Summers filed a complaint against Baldwin Enterprises, Inc., alleging defective work performed on her house in Muskegon Heights. The Bureau of Commercial Services filed a "formal" complaint in June 2001. A hearing convened in October 2001; the case was settled, but Baldwin Enterprises reneged and filed a lawsuit in the Muskegon District Court. That suit is still pending. A second session of this hearing convened in March 2002. Tracy Hampton represented the Bureau of Commercial Services. Phil Baldwin represented Baldwin Enterprises.

ISSUES AND APPLICABLE LAW

The Bureau of Commercial Services alleges that Baldwin Enterprises violated the following statutes and rules:

MCL 339.2411(2)(m) allows penalties for "Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official."

1979 AC R 338.1533(1) and MCL 339.604(c) provide penalties for failure to comply with the following rule:

> A builder or contractor shall deliver to his customer fully executed copies of all agreements between them, including specifications, and when construction is involved, both plans and specifications. He shall make certain that all such writings are definite in their terms and sufficient to express the intent of the parties with regard to the transaction, the type and amount of work to be done, and the type and quality of materials to be used, and the parties shall adhere to applicable building, housing, and zoning regulations.

1979 AC R 338.1533(3) and MCL 339.604(c) provide penalties for failure to comply with the following rule: "Changes in the agreement shall be in writing, dated, and initialed by the parties to be bound."

FINDINGS OF FACT

A. Phillip Baldwin owns Baldwin Enterprises, Inc. This case involves a project at 2217 Dyson Street, Muskegon Heights, MI, owned by Mia Summers. Ms. Summers bought a manufactured home from Value Rite Homes, Inc., and contracted with Baldwin Enterprises to construct a foundation, a garage, and driveway.

The original estimate (Exhibit 1) was for $25,807. There is, however, no compete contract document -- that is, no document signed by the parties, including prices and details of the work to be done. Ms. Summers made two payments to Baldwin Enterprises, totaling $16,575.

Baldwin Enterprises started work in October 1999. The home was delivered to the site in February 2000.

The Muskegon Heights building inspector, Karey Morrow, visited the site several times, during and after construction. In the spring of 2000, he ordered work stopped. The house had been installed on the foundation, but the foundation walls had buckled and the weight of the house was collapsing the foundation. Mr. Morrow arranged a meeting with the builder, owner, and manufacturer. The parties argued over who was at fault.

In Mr. Morrow's view, both parties had known that there was a problem with the foundation, and the house should not have been placed on the foundation until the problem had been fixed. The foundation was buckled, bricks were separated. Water ran through the cracked foundation when it rained. The problem was due either to settling or else to poor backfilling; Mr. Morrow does not know which of those two mechanisms may have caused the problem. There was a pressure against the wall from the outside.

Both the builder and manufacturer hired engineering firms to inspect the foundation. The manufacturer hired Westshore Consulting, which submitted a report. (Exhibit 6). Baldwin Enterprises hired Soils and Structures. The report, if any, from Soils and

Structures is not in the record. The record does not disclose the discrepancies, if any between the Westshore Consulting and the Soils and Structures recommendations.

Baldwin Enterprises made repairs to the foundation, following the instructions of its engineering firm, Soils and Structures. On August 18, 2000, or thereabouts, Mr. Morrow and an engineer from Soils and Structures inspected the house and found that the foundation had been repaired according to the instructions given by Soils and Structures. Mr. Morrow issued an occupancy permit, and Ms. Summers moved into the house in August 2000.

In September 2000, Ms. Summers called for another inspection. She discovered other defects in the house. Mr. Morrow inspected the house again and verified the following defects.

First, the garage entry door was not closing properly. It was not square and had not been built square.

Second, the roof over the garage was bowed. The bowing was caused by rafters inside the garage roof. One rafter was too long and caused a bow in the fascia.

Third, the driveway was cracked in many places. The entire driveway needs to be replaced.

Fourth, the garage entrance was not properly sloped. Water flowed into the garage from the driveway when it rained.

In November 2000, Ms. Summers filed a complaint with the Builders Board against Baldwin Enterprises, citing problems with the garage, the foundation, and the

driveway. After she filed a complaint, Ms. Summers did not allow Baldwin Enterprises to perform any more work on the project.

In late 2001, Baldwin Enterprises filed a complaint in 60th District Court in Muskegon, seeking payment.

CONCLUSIONS OF LAW

There is no written contract between the parties, signed by both parties, detailing the work to be done and stating the price. Under the rules, the builder is responsible for preparing such contracts. Accordingly, Baldwin Enterprises violated1979 AC R 338.1533(1) which reads in part:

> A builder or contractor shall deliver to his customer fully executed copies of all agreements between them, including specifications, and when construction is involved, both plans and specifications. He shall make certain that all such writings are definite in their terms and sufficient to express the intent of the parties with regard to the transaction, the type and amount of work to be done, and the type and quality of materials to be used, and the parties shall adhere to applicable building, housing, and zoning regulations.

1979 AC R 338.1533(3) requires that "Changes in the agreement shall be in writing, dated, and initialed by the parties to be bound." I find no violation of that rule. The charge is redundant. There was no properly written contract between the parties to be "changed."

In Mr. Morrow's September 2000 inspection, four workmanship defects were found: The garage entry door was out of square. The garage roof was bowed. The driveway was cracked and water flowed into the garage. Accordingly, Baldwin

Enterprises is responsible for a violation of MCL 339.2411(2)(m) which imposes penalties for "Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official."

Finally, the problem with the foundation was corrected before September 2000 and does not constitute a violation of any building law.

DECISION

Baldwin Enterprises violated 1979 AC R 338.1533(1) [failure to prepare written contract] and MCL 339.2411(2)(m) [workmanship defects]. Because litigation is pending in District Court, any restitution award is within that court's jurisdiction.

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Erick Williams
Administrative Law Judge