

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

In the matter of

Docket No. 2001-1609

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-01-3293-00

v

Agency: Bureau of Commercial Services

**Bernard R. Whelpley,
Respondent**

Case Type: Sanction

**Issued and entered
this 3rd day of December, 2001
by Howard T. Spence
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracey Hampton, Attorney at Law, appeared on behalf of the Petitioner, Bureau of Commercial Services. Neither Respondent, Bernard R. Whelpley, nor an attorney on behalf of Respondent, appeared at the hearing.

This proceeding was commenced with the filing of a Notice of Hearing upon a Formal Complaint, dated July 30, 2001. The Notice of Hearing was mailed to Respondent's last known address on September 17, 2001. The Notice informed Respondent that failure to appear at a scheduled hearing may result in a default being entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.* (APA). The hearing in this matter was held on September 17, 2001. Ms. Hampton requested that the Petitioner be allowed to proceed in

the Respondent's absence pursuant to Section 72 of the 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:

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

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

ISSUES AND APPLICABLE LAW

The Formal Complaint discloses that Respondent was licensed as a residential builder under the Occupational Code, 1980 PA 299, as amended, Article 24; MCL 339.2401-2412 *et seq.*; MSA 18.425(2401)-(2412).

The Complaint further discloses that on or about January 7, 2000 and January 19, 2000, Holton Garage Door Company provided to the Respondent services on a residential structure. Respondent failed to pay for the services. Respondent, on February 18, 2001, had a Judgment entered against him in the State of Michigan 60th Judicial District Court in the case of Holton Garage Door Co. v Bernard Whelpley in the amount of \$2,049.07 plus interest . The Complaint avers that Respondent failed to satisfy the Judgment, contrary to MCL 339.2411(2)(l); MSA 18.425(2411)(2)(l). The instant Complaint has been processed

in all respects in conformity with the requirements of all applicable statutes and rules including, but not limited to, the Administrative Procedures Act. Based upon the conduct as aforesaid, Respondent has acted contrary to § 2411(2)(l) of the Occupational Code, 1980 PA 299, as amended; MCL 339.2411(2)(l); MSA 18.425(2411)(2)(l), constituting grounds for the assessment of a penalty as defined in § 602 of the Occupational Code.

FINDINGS OF FACT

Based upon the foregoing, I make the following findings of fact.

- (1) Respondent is licensed as a residential builder under the Code.
- (2) On or about January 7, 2000 and January 19, 2000, Holton Garage Door Company provided to Respondent services on a residential structure.
- (3) Respondent failed to pay for the services.
- (4) Respondent, on February 18, 2001 had a Judgment entered against him in the State of Michigan 60th Judicial District Court in the case of Holton Garage Door Co. v Bernard Whelpley in the amount of \$2,049.07 plus interest.
- (5) Respondent has failed to satisfy the Judgment.
- (6) Respondent has acted contrary to § 2411(2)(l) of the Occupational Code constituting grounds for assessment of a penalty.
- (7) Respondent has since filed for bankruptcy.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, page 230. 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 District, 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 Section 2411(2)(l) of the Code.

RECOMMENDED SANCTION

I recommend that Respondent pay a fine in the amount of \$1,250.00. If not paid within 30 days from the date the Final Order of the Board is issued and entered, I recommend the Board order revocation of the Respondent's license.

Howard T. Spence (P-27045)
Administrative Law Judge