

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

In the matter of

**Bureau of Commercial Services,
Petitioner**

v

**Mark Luke Boals
dba Solid Structures of Michigan,
Respondent**

Docket No. 2001-1739

Agency No. 21-99-0057

Agency: Bureau of Commercial Services

Case type: Sanction

**Issued and entered
this 24th day of June, 2002
by Erick Williams
Administrative Law Judge**

HEARING REPORT

On 28 June 2001, the Bureau of Commercial Services filed a complaint against Mark Boals under the Occupational Code, MCL 339.101 *et seq.* A hearing was scheduled for 11 January 2001, adjourned to 11 March 2002 at Mr. Boals' request, and adjourned again to 6 May 2002 at the state's request. When the hearing convened on 6 May 2002, Lisa Funkhauser represented the Bureau of Commercial Services, but no one appeared in behalf of Mr. Boals. Mr. Boals having appeared at the first two sessions, service was adequate under the Administrative Procedures Act, MCL 24.201 *et seq.* This opinion finds Mr. Boals liable for restitution of \$28,420 and a \$3,000 fine.

ISSUES AND APPLICABLE LAW

The complaint alleges violations of the following laws: MCL 339.604(b) and (c)

read:

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:...

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

(c) Violates a rule of conduct of an occupation....

MCL 339.2411(2)(d) and (m) read:

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

(d) A willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications....

(m) 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 reads in part:

(1) 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....

(3) Changes in the agreement shall be in writing, dated and initialed by the parties to be bound.

1979 AC R 338.1551(4) and (5) read:

(4) If a complaint is justified by the local building inspector or by a person authorized by the department to make inspections, the builder or contractor shall correct the complaint within a reasonable time. Failure or refusal by the licensee to correct a structural matter that is materially deficient, dangerous or hazardous to the owners shall be presumed to be dishonest or unfair dealing.

(5) Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

FINDINGS OF FACT

There are no contested issues of fact. This opinion takes the facts cited in the complaint as true, with the following amendment: items 13 and 14 in the inspection report have been corrected.

Ms. Funkhauser introduced two repair estimates (Exhibits 1 and 2) for correction of the defects cited in the complaint, showing the cost of correction as \$28,090 and \$28,750 respectively.

CONCLUSIONS OF LAW

There are no contested issues of law. This opinion takes the legal allegations in the complaint as true.

DECISION

Mr. Boals violated MCL 339.604(b) and (c), MCL 339.2411(2)(d) and (m), 1979 AC R R 338.1533(3), and 1979 AC R 338.1551(4) and (5).

PROPOSED SANCTIONS

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Restitution of \$28,420 is appropriate, the average of the two estimates. Ms Funkhauser recommended a \$3,000 fine.

Erick Williams
Administrative Law Judge