

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

In the matter of

Docket No. 2001-1792

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-2748-00

v

Agency: Bureau of Commercial Services

**K & B Construction and Home
Improvement**

Case Type: Sanction

**Stephen James Karston, Qualifying
Officer,
Respondent**

_____ /

**Issued and entered
this 23rd day of January, 2002
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, Stephen James Karston, 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 September 17, 2001. The Notice of Hearing was mailed to Respondent's last known address on October 16, 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 January 15, 2002. 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) *et seq.* (the Code).

The Complaint further discloses that Respondent entered into a contract to perform services regulated by 1980 PA 299, as amended, with Gardner Klassen and Angela Butterfield on or about April 13, 1999 and has failed to perform the requirements of the contract in a workmanlike manner, contrary to MCL 339.2411(2)(m); MSA 18.425(2411)(2)(m).

The Complaint further states that Respondent, in performance of the contract,

failed to comply with §§ 502.9, 602.3, 602.6, 604.13 and 311.1 of 1995 Council of American Building Officials Code, which was adopted by the Township of Ada, via Ordinance 0-0209 98-1, Section 22.000, effective February 13, 1998, contrary to 1979 AC, R 338.1551(5). Respondent failed to meet minimal standards of acceptable practice for Respondent's occupation as a residential builder, contrary to MCL 339.604(g); MSA 18.425(604)(g). Between October 14, 1999 and December 13, 1999, Respondent performed services required by the contract. At the time Respondent performed some of the services required by the contract, Respondent was not licensed, contrary to MCL 339.601(1); MSA 18.425(601)(1), although required to be licensed pursuant to 1980 PA 299, *supra*, nor did Respondent meet any of the exceptions to being licensed pursuant to MCL 339.2403; MSA 18.425(2403) of 1980 PA 299, *supra*. The Respondent has violated a rule of conduct in practicing an occupation, contrary to MCL 339.604(c); MSA 18.425(604)(c).

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 April 13, 1999, Respondent entered into a contract to perform services with Gardner Klassen and Angela Butterfield, Complainants.

- (3) Respondent, in the performance of the contract, failed to comply and/or meet minimal standards of acceptable practice for Respondent's occupation as a

residential builder.

- (4) Between October 14, 1999 and December 13, 1999, Respondent performed services required by the contract.
- (5) At the time Respondent performed some of the services required by the contract, Respondent was not licensed.
- (6) Respondent has violated a rule of conduct in practicing an occupation.

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 Sections 604(c) of the Occupational Code, 1980 PA 299, as amended; MCL 339.604(c); MSA 18.425(604)(c). No restitution is ordered due to bankruptcy of Respondent.

RECOMMENDED SANCTION

I recommend that Respondent's license be revoked and that Respondent be

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ordered to pay a fine of \$1,500.00.

Howard T. Spence
Administrative Law Judge