

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS**

In the matter of:

**CONNELL BUILDERS CO.
MICHAEL B. CONNELL
QUALIFYING OFFICER
License No. 21-02-135934(Lapsed)**

**Docket No. 2001-2005
Complaint No. 8286
Former Complaint No.21-00-3979-00**

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on September 16, 2003 and

WHEREAS, the Board having considered the Finding of Fact and Conclusions of Law in the Hearing Report of James L. Karpen, Administrative Law Judge, dated November 6, 2002,

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Connell Builders Co., Michael B. Connell, Qualifying Officer, Licensed Residential Builder, License No. 21-02-135934 (Lapsed), hereafter "Respondent", having been found in violation of Sections 604(g); 2411(2)(m) of the Michigan Occupational Code, 1980 P.A. 299, as amended, hereafter the "Code", MCL 339.604(g); MCL 339.2411(2)(m) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:

- 1. Respondent shall pay a FINE in the amount of Five Thousand Dollars and 00/100 Cents (\$5,000.00), a higher fine than recommended by the Administrative Law Judge due to the severity of the violations, particularly incompetence and poor workmanship, said fine to be paid to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 8286 clearly indicated on the check or money order, made payable to the State of Michigan and sent to the Department of Labor & Economic Growth, Bureau of Commercial Services, enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.**
- 2. Respondent shall make RESTITUTION to Nellie L. Korff in the amount of Ten Thousand Dollars and 00/100 Cents (\$10,000.00) by certified check made payable to Nellie L. Korff and mailed to 6846 Pineview Drive, P.O. Box 705, Mancelona, MI 49659. Restitution shall be paid within sixty (60) days from the mailing date of this Final Order.**
- 3. Respondent Connell Builders Company, Michael B. Connell, Q.O., Licensed residential Builder, License No. 21-02-135934 (Lapsed), shall be and hereby is immediately REVOKED effective the mailing date of this Final Order. Any and all other Article 24 licenses of Respondent, if any, shall be and are hereby immediately REVOKED effective the mailing date of the Final Order, MCL. 339.2405(3). No application for licensure, relicensure or reinstatement shall be considered by the Department until the fine imposed by the Final Order is paid-in-full.**
- 4. Respondent shall submit in writing to the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Audit Unit, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance, in a form acceptable to the Department, with each and every requirement of this Final Order.**

This Final Order shall not be construed as limiting the Department of Labor & Economic Growth, any other agency of the State of Michigan, or any individual as to the use of a lawful method of collection for the payment imposed by this Final Order.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this ____ day of _____, 2003.

**BY: _____
Mark T. Glynn, Chairperson**

Date Mailed: _____

Proof of Compliance should be filed with:

**Department of Labor & Economic Growth
Bureau of Commercial Services
Enforcement Division
Audit Unit
P.O. Box 30018
Lansing, Michigan 48909**

This is the final page of the Final Order in the matter of Connell Builders Co., Michael B. Connell, Q.O., Licensed Residential Builder, Complaint No. 8286, before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, consisting of three (3) pages, this page included.

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

In the matter of

Docket No. 2001-2005

Bureau of Commercial Services,
Petitioner

Agency No. 21-00-3979-00

v

Agency: Bureau of Commercial Services

Connell Builders Company
Michael Bruce Connell, Q.O.,
Respondent

Case Type: Sanction

_____ /

Issued and entered
this 6th day of November, 2002
by James L. Karpen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Lisa A. Funkhouser, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Respondent, Michael B. Connell, appeared *pro se*.

This proceeding commenced with the filing of a Notice of Hearing dated December 7, 2001, scheduling a hearing for February 21, 2002. After one adjournment, the hearing was held as rescheduled on September 13, 2002. The record was closed when the last post hearing brief was received on September 27, 2002.

The case stems from an October 10, 2001 Formal Complaint (Complaint) which discloses that Respondent is licensed as a residential builder under the Occupational Code,

1980 PA 299, as amended, MCL 339.101 *et seq.* (Code). The Complaint alleges that Respondent, on February 1, 1999, secured a building permit to work on the residence of Nellie Korff. The Complaint further alleges that Respondent's workmanship was defective, contrary to Section 2411(2)(m) of the Code. The Complaint also alleges that Respondent failed to comply with the local building code, contrary to 1979 AC, R 338.1551(5). The Complaint avers that Respondent failed to meet minimal standards of acceptable practice as a residential builder, contrary to Section 604(g) of the Code. The Complaint asserts that Respondent failed to respond to Ms. Korff's complaint in a timely manner, contrary to 1979 AC, R 338.1551(2) and that Respondent violated a rule of conduct in practicing his occupation, contrary to Section 604(c) of the Code.

ISSUES AND APPLICABLE LAW

The issues in this case are whether Respondent violated Sections 604(c), (g) and 2411(2)(m) of the Code and Rules 338.1551(2) and (5), promulgated under the Code. These sections of the Code and rules are 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.

* * *

(g) Commits an act which demonstrates incompetence.

Sec. 2411.

* * *

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

* * *

(m) Poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official.

R 338.1551

* * *

(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. He shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or a portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

* * *

(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.

SUMMARY OF THE EVIDENCE

At the hearing the parties introduced the following exhibits.

Petitioner's Exhibits

Docket No. 2001-2005

Page 4

- Exhibit 1: Housing Rehabilitation Program Installment Loan Note, dated November 19, 1998, in the amount of \$24,851.00.
- Exhibit 2: Work Specifications for Nellie Korff Project.
- Exhibit 4: Photos of Ms. Korff's house.
- Exhibit 5: Photos of Ms. Korff's house.
- Exhibit 6: Ms. Korff's insurance claim for damages to her floor caused by Respondent.
- Exhibit 7: Repair estimate for Ms. Korff's house from Fleet Construction in the amount of \$19,305.00.
- Exhibit 10: Estimate to install access to bathroom, plumbing in Ms. Korff's house in the amount of \$250.00.
- Exhibit 12: Ms. Korff's September 1, 2000 complaint against Respondent.
- Exhibit 13: A February 1, 1999 Building Inspection Report.
- Exhibit 14: A February 1, 1999 Building Inspection Report and attachments.
- Exhibit 15: A February 1, 1999 Building Inspection Report.
- Exhibit 16: A March 4, 1999 check issued to Respondent for work on Ms. Korff's house in the amount of \$10,000.00 and a \$12,000.00 check issued to Respondent dated May 17, 1999, for work on Ms. Korff's house.
- Exhibit 17: A June 7, 1999 letter from Building Inspector Edwin Stevens to Respondent.
- Exhibit 18: A drawing of the project.

Respondent's Exhibits

Exhibit B: A punch list dated August 4, 1999 from Building Inspector Edwin Stevens and Respondent's response.

Exhibit C: A February 2000 Letter from Ms. Korff to Respondent.

The first witness to testify at the hearing was Nellie Korff who lives 14 miles from Mancelona, Michigan. Ms. Korff has lived in her house for 22 years. Ms. Korff has had to use a wheelchair since 1998. Ms. Korff obtained a low income loan in the amount of \$24,851.00 from the Antrim County Housing Committee to repair the roof on her house and to make the home wheelchair accessible. Ms. Korff first met Respondent on November 19, 1998 and he agreed to undertake the work on her house.

Respondent was supposed to complete the work on her home between December 14, 1998 and February 17, 1999. Due to a breathing problem, Ms. Korff left her house on December 12, 1998 and returned on April 16, 1999 in order to have the work done in her absence. Ms. Korff said Respondent did not start working on her home until January 1999. Ms. Korff testified that the new addition to her home was started, but never completed. Ms. Korff further testified that although Respondent installed a new roof, six weeks afterward it showed signs of leaking by the fireplace and multiple leaks have appeared since then. Ms. Korff identified the photos in Exhibit 5 which show water leaking into her living room, at the south entrance to the house, at the north wall of a bedroom, at the north and west walls of the bedroom and outside the bedroom door. Ms. Korff also identified Exhibit 5-G, a photo of her closet floor which shows there is no access to the bathroom plumbing. Ms. Korff also testified that the door to the bedroom in the new addition does not fit properly and is crooked. She also noted that there is a gap between the floor and the trim in the bathroom in the new

addition and gaps between the wall and the floor in the bedroom closet. Ms. Korff stated that the north wall of the bedroom in the new addition is so drafty that even in a light wind a match can be blown out and that the east wall in the bedroom is cold and wet in the winter. In August 1999, due to the damage Respondent caused, Ms. Korff refused to let him return to her home.

Arlen Turner, the Antrim County Building Inspector for the past ten years was the next witness to testify. Mr. Turner testified he performed a footing inspection on the addition to Ms. Korff's house on February 1, 1999 and he performed a rough building inspection on February 3, 1999. He stated that he inspected the roof on March 4, 1999 and told Respondent he needed to install braces for the roof. The roof did not pass the final building inspection on April 20, 1999 due to inadequate rafter supports and inadequate insulation. Mr. Turner identified Exhibits 13, 14 and 15, the building inspection reports he issued in this matter. Exhibit 13 shows the roof rafters are not installed properly and the insulation is not finished, nor does it have the correct R-value. Exhibit 14 shows there was no ice and water shield along the eaves and that the plumbing was sealed with no access panel. Exhibit 14 also notes that the north wall baseboard does not meet the floor in the new addition and the bedroom door (an exterior door) was never caulked and leaks badly. Exhibit 15 reiterates the defective roof rafters and insulation and notes the bedroom and bathroom doors do not fit. Mr. Turner notes on Exhibit 15 that, "work on this entire job was questionable due to lack of contractor's knowledge." It should be noted that a review of exhibits 13, 14 and 15 show many apparent problems with Respondent's work such as the deck not being level, windows leaking, a lack of trim, etc. which Mr. Turner did not believe was either a code violation or a lack of workmanship. Petitioner's counsel, at the hearing, stated that Petitioner was only

claiming as defects, those matters noted on the building inspection reports as a code violation and the various “gaps” between the wall and floors and doors.

Mr. Turner testified that he told Respondent at least twice that he needed to fix the rafters. Turner said he did not believe Respondent knew how to do the fix. Mr. Turner concluded his testimony by observing that Respondent did a bad job from beginning to end and a new roof should not leak.

Respondent, Michael Connell, was the last witness to testify. Mr. Connell acknowledged he had received payments totaling \$22,000.00 for his work on Ms. Korff's house. He testified that the need to install a new septic tank in December 1998 delayed the start of work on the project until January 30, 1999. Respondent testified that the roof leaks were due to water and ice buildup on the roof (since the roof was installed in the spring of 1999, presumably the winters of 1999-2000 and 2000-2001 caused the damage). Respondent also testified that the house settling caused the gaps between the floor and wall and contributed to the roof leaking. However, Respondent acknowledged he received Exhibit 17, a June 7, 1999 letter from another building inspector, Edwin Stevens, which informed him that the new roof is leaking on both sides and there is water damage in the living room, hallway and both upstairs bedrooms. Respondent also testified that as long as plumbing is accessible from a crawl space, it meets State building code requirements. The record was left open for submission of the State building code requirement. Mr. Turner sent in a copy of the 1997 International Plumbing Code Commentary which on page 97, Section 405.8, requires an access panel for slip joint connections. Since there is no testimony whether the plumbing at issue utilized a slip joint connection, it is not evident that an access panel was

required.

Before turning to the findings of fact, several matters warrant comment. First, a review of the evidence in this case leads to the conclusion stated by Mr. Turner. This was a bad job from beginning to end. The “new” roof leaked soon after it was installed causing substantial damage to Ms. Korff’s home. Instead of accepting responsibility, Respondent unconvincingly blamed ice buildup and the residence settling as causes for the leaks. Moreover, it does not take an expert to know that walls and floors should meet. Thus, it is clear that Respondent failed to perform his services in a workmanlike manner and that he failed to meet minimal standards of acceptable practice as a residential builder. However, Petitioner’s counsel did not establish what building code was adopted by Antrim County and when it was adopted. There is also no evidence that Respondent failed to respond to Ms. Korff’s complaint in a timely manner.

FINDINGS OF FACT

Based upon the entire record, as discussed above, I make the following findings of fact.

1. Respondent, Michael B. Connell, is licensed as a residential builder under the Code.
2. In the late fall/early winter of 1998 Respondent agreed to install an addition and a new roof to the residence of Nellie Korff.
3. Respondent worked on Ms. Korff’s residence in the winter and spring of 1999.
4. Respondent failed to perform in a workmanlike manner.
5. Respondent’s work on Ms. Korff’s home failed to meet minimal standards of

acceptable practice for a residential builder.

6. Petitioner failed to prove that Respondent failed to respond to the complaint in a timely manner.
7. Petitioner failed to prove that Respondent violated a rule of conduct in practicing his occupation.

CONCLUSIONS OF LAW

As the foregoing indicates, Petitioner established by a preponderance of the evidence, that Respondent violated Sections 604(g) and 2411(2)(m) of the Code.

RECOMMENDATIONS

I recommend Respondent pay a civil fine in the amount of \$2,000.00 and pay restitution to Ms. Korff in the amount of \$10,000 as evidenced by her testimony and Exhibits 6, 7 and 10. If Respondent fails to pay the fine and restitution within 60 days of a final order, I recommend his license be revoked.

James L. Karpen
Administrative Law Judge