

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

In the matter of

Docket No. 2001-23

**Bureau of Commercial Services,
Petitioner**

Agency No. DF 21-99-5252-00

v

Agency: Bureau of Commercial Services

**Michael David Cox,
dba Majesty Building Services,
Respondent**

Case Type: Sanction

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**Issued and entered
this 6th day of March 2001
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Hal Ziegler, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Michael David Cox, dba Majesty Building Services, nor an attorney on behalf of Respondent appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated January 16, 2001, scheduling a hearing for February 8, 2001. The Notice of Hearing was mailed to the parties' last known addresses. Further, the Notice of Hearing informed the parties that if either party failed to appear at the scheduled hearing, a Default may be 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 Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent, Michael David Cox, dba Majesty Building Services, violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et. seq.*; MSA 18.425(101) *et. seq.* (Code).

At the hearing, Petitioner's representative 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 Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint dated September 28, 2000, are deemed true.

During the February 14, 2001 hearing, one exhibit was accepted into the record. That exhibit was: Exhibit 1 - Building contract and canceled checks.

During the February 14, 2001, hearing, no other evidence was offered into the record other than the exhibit.

ISSUES AND APPLICABLE LAW

The specific issues in this case are whether Respondent violated the following sections of the code and a rule promulgated under the Code: Section 2411(2)(a); Section 2411(2)(e); Section 2411(2)(m); Section 2409(2); Section 604(c); Section 604(h); and 1979 AC R 338.1551(5). Those sections and rule state in pertinent part:

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:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

(e) A willful violation of the building laws of the state or of a political subdivision of the state.

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

Sec. 2409 (2) A licensee shall report to the department a change of name or address or a change of members or addresses of the partnership, association, or corporation holding a license under this article within 30 days after the change occurs.

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.

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

Rule 338.1551(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

Based on the record, I make the following findings of fact:

1. On or about February 14, 1997, Respondent entered into a contract with Beth Copp to perform services which were regulated by the Code.
2. Respondent has, without legal excuse, failed to complete the terms of the contract.
3. Respondent failed to perform the requirements of the contract in a workmanlike manner.
4. Respondent, in performance of the contract, failed to comply with § 106 of 1997 Uniform Building Code, which was adopted by the City of Portage, via Ordinance #98-05.
5. Respondent failed to report to the Department of Consumer & Industry Services a change of address within 30 days after said change.
6. Respondent has violated a provision or rule for which a penalty is not otherwise prescribed.
7. Respondent 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, §60.48, at 230 (2d ed. 1994). 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 Dist., 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 the following rule and sections of the Code:

1. Respondent has, without legal excuse, failed to complete the terms of the contract, in violation of Section 2411(2)(a) of the Code.

2. Respondent failed to perform the requirements of the contract in a workmanlike manner, in violation of Section 2411(2)(m) of the Code.

3. Respondent, in performance of the contract, failed to comply with § 106 of 1997 Uniform Building Code, which was adopted by the City of Portage, via Ordinance #98-05, in violation of Section 2411(2)(e) of the Code and Rule 338.1551(5).

4. Respondent failed to report to the Department of Consumer & Industry Services a change of address within 30 days after said change, in violation of Section 2409(2) of the Code.

5. Respondent has violated a provision or rule for which a penalty is not otherwise prescribed, in violation of Section 604(h) of the Code.

6. Respondent violated a rule of conduct in practicing an occupation, in violation of Section 604(c) of the Code.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, the following recommendations are made by the Administrative Law Judge to the Board:

1. Restitution be ordered in the amount of \$7,550.00 to be paid to Beth Copp for the monies that have been tendered to Respondent.
2. Based upon the above violations of the Code and rule, a civil fine in the amount of \$2,000.00 be assessed against Respondent.
3. Any and all licenses under the jurisdiction of the Code held by Respondent be suspended until such time as the restitution and fines have been paid in full.

James L. Karpen
Administrative Law Judge