

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

In the matter of

Docket No. 2001-607

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-3636-00

v

Agency: Bureau of Commercial Services

**Delbert M. Brigner
d/b/a Brigner Construction,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 18th day of July, 2001
by Lauren G. Van Steel
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Attorney Tracey L. Hampton appeared on behalf of Petitioner Bureau of Commercial Services. Neither Respondent Delbert M. Brigner, nor an attorney or representative on behalf of Respondent, appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated May 9, 2001, scheduling a hearing for June 21, 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 judgment might be entered pursuant to Sections 72 and 78 of the Michigan Administrative Procedures Act, 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 a Formal Complaint filed on December 21, 2000, which alleged noncompliance with the Michigan Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* (Code), specifically Sections 2411(2)(a); 2411(2)(m); and 604(c), as well as Rules 51(2) and 51(4) of the Residential Builders and Maintenance and Alteration Contractors Board Rules, being 1979 AC, R 338.1551(2) and (4).

At the hearing held on June 21, 2001, Petitioner's representative requested to be allowed to proceed in Respondent's absence pursuant to Section 72 of the APA and that a default be granted for 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....

Petitioner's motion for default was granted. As a result of the default judgment, the factual allegations contained in Petitioner's Formal Complaint are deemed to be proven as true.

During the hearing, the following exhibit was accepted into the record:

Petitioner's Exhibit 1 Estimate for repairs from Northwoods Construction Co. for \$1,023.00 and receipt for materials from Wickes Lumber for \$195.54, totaling \$1,218.54

No further evidence was offered for the record by Petitioner at the hearing, other than the exhibit.

ISSUES AND APPLICABLE LAW

The issues in this matter are whether Respondent has violated the following Code sections: 2411(2)(a); 2411(2)(m) and 604(c), as well as Rules 51(2) and 51(4), which provide in pertinent part as follows:

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.

* * *

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

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.

Rule 51(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.

Rule 51(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.

FINDINGS OF FACT

Based on the record and the default judgment granted for Petitioner, the undersigned makes the following findings of fact:

1. On or about July 28, 1998, Respondent entered into a contract with Larry Ringwelski to perform services which were regulated by the Code.
2. Respondent has failed to perform the requirements of the contract in a workmanlike manner. Petitioner's Exhibit 1 sets forth repairs totaling \$1,218.54 necessitated by Respondent's violations, specifically items #1, 2, 5 and 6 of the building inspection report [Exhibit 2 of the Formal Complaint].
3. Respondent failed to correct those items justified by the building inspection report [Exhibit 2 to the Formal Complaint] within a reasonable time.
4. Respondent has, without legal excuse, failed to perform the terms of the contract.
5. Respondent failed to respond to the complaint in a timely manner.
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, §60.48, at 230 (2d ed. 1994)]. The burden of proof in this matter is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon 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 above findings of fact and the default judgment granted against Respondent, Petitioner has proven by a preponderance of the evidence that Respondent violated the Code and administrative rules as follows:

1. Respondent has failed to perform the requirements of the contract in a workmanlike manner, in violation of Section 2411(2)(m) of the Code.
2. Respondent has failed to correct items justified by the building inspection report [Exhibit 2 to the Formal Complaint] within a reasonable time, in violation of Rule 51(4).
3. Respondent has, without legal excuse, failed to perform the terms of the contract, in violation of Section 2411(2)(a) of the Code.
4. Respondent failed to respond to the complaint in a timely manner, in violation of Rule 51(2).
5. Respondent has 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 undersigned to the Residential Builders and Maintenance and Alteration Contractors Board:

1. **Restitution** be ordered in the total amount of **\$1,218.54** to be paid to Larry Ringwelski, based on Petitioner's Exhibit 1.
2. A **civil fine** in the amount of **\$2,500.00** be assessed against Respondent.
3. Any and all licenses or registrations under the jurisdiction of the Code held by Respondent be suspended if the above fine and restitution are not paid within the time frame set forth in the Final Order in this matter.

Lauren G. Van Steel
Administrative Law Judge