

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

In the matter of

Docket No. 2001-655

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-3388-00

v

Agency: Bureau of Commercial Services

H. Keith Loar

**d/b/a H. Keith Loar Builders,
Respondent**

Case Type: Sanction

**Issued and entered
this 5th day of September, 2001
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Attorney Michael Homier appeared on behalf of Respondent Bureau of Commercial Services. Neither Respondent H. Keith Loar d/b/a H. Keith Loar Builders, 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 14, 2001, scheduling a hearing for July 20, 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 8, 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)(d), (j) and (m); 601(1); 604(c), and Administrative Rules 51(4) and (5) of the Residential Builders and Maintenance and Alteration Contractor Board Rules, being 1979 AC, R 338.1551(4) and (5).

After one adjournment the hearing was held on August 10, 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 true.

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

Petitioner's Exhibit 1 Construction estimates

No further evidence was offered for the record by Petitioner at the hearing.

ISSUES AND APPLICABLE LAW

The issues in this matter are whether Respondent has violated the following Code sections: 2411(2)(d), (j) and (m); 601(1); 604(c), and Administrative Rules 51(4) and (5), 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:

(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.

(j) Aiding or abetting an unlicensed person to evade this article, or knowingly combining or conspiring with, or acting as agent, partner, or associate for an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as or being an ostensible licensed residential builder or licensed residential maintenance and alteration contractor for an undisclosed person who does or shall control or direct, or who may have the right to control or direct, directly or indirectly, the operations of a licensee.

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

Sec. 601(1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

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(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.

Rule 51(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 and the default judgment granted for Petitioner, the undersigned makes the following findings of fact:

1. On or about September 15, 1999, L.A. Sunrooms & Spas, Inc. entered into a contract with Donald G. Clark to perform services regulated by the Code.
2. At the time L.A. Sunrooms & Spas, Inc. entered into the contract, L.A. Sunrooms & Spas, Inc. was not licensed.
3. On or about November 9, 1999, a building permit was issued to Respondent by Summit Township, Michigan for the services which were subject of the contract between L.A. Sunrooms & Spas, Inc. and Donald G. Clark.
4. Respondent has failed to provide services for which the permit was issued in a workmanlike manner.
5. Respondent failed to ensure that the services for which the permit was issued were performed in compliance with § 1504.1 of 1996 State Code, which was adopted by the Township of Summit, via Ordinance #101, Section 101.1, effective April 14, 1992.

6. Respondent failed to correct items within a reasonable time.

7. Respondent has failed to ensure the services were provided in accordance with the plans and specifications contemplated in the contract.

8. Respondent has permitted his license to be utilized by L.A. Sunrooms & Spas, Inc., an entity unlicensed under 1980 PA 299, as amended although required to be licensed pursuant to 1980 PA 299.

9. 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 Sections, 2411(2)(d), (j) and (m); 601(1); 604(c), and Administrative Rules 51(4) and (5) as follows:

1. At the time L.A. Sunrooms & Spas, Inc. entered into the contract, L.A. Sunrooms & Spas, Inc. was not licensed, in violation of Section 601(1) of the Code.

2. On or about November 9, 1999, a building permit was issued to Respondent by Summit Township, Michigan for the services which were subject of the contract between L.A. Sunrooms & Spas, Inc. and Donald G. Clark.

3. Respondent has failed to provide services for which the permit was issued in a workmanlike manner, in violation of Section 2411(2)(m) of the Code.

4. Respondent failed to ensure that the services for which the permit was issued were performed in compliance with § 1504.1 of 1996 State Code, which was adopted by the Township of Summit, via Ordinance #101, Section 101.1, effective April 14, 1992, in violation of Rule 51(5).

5. Respondent failed to correct items within a reasonable time, in violation of Rule 51(4).

6. Respondent has failed to ensure the services were provided in accordance with the plans and specifications contemplated in the contract, in violation of Section 2411(2)(d) of the Code.

7. Respondent has permitted his license to be utilized by L.A. Sunrooms & Spas, Inc., an entity unlicensed under 1980 PA 299, as amended although required to be licensed pursuant to 1980 PA 299, in violation of Section 2411(2)(j) of the Code.

8. 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. A civil fine of at least \$5,000.00 be assessed against Respondent.
2. Restitution be ordered in the total amount of \$15,000.00, to be paid to

Don Clark based on Petitioner's Exhibit 1.

3. Any and all licenses or registrations under the jurisdiction of the Code held by Respondent be revoked.

James L. Karpen
Administrative Law Judge