

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

In the matter of:

DUANE D. RUNYON	Docket No. 2001-735
DIB/A RUNYON CONSTRUCTION	Complaint No. 24021
License No. 21-01-052410 (Lapsed)	Former Complaint No. 21-99-3936-00

OTHER LICENSE

**RUNYON CONSTRUCTION COMPANY, INC.
DUANE D. RUNYON, QUALIFYING OFFICER
License No. 21-02-160347**

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 Findings of Fact and Conclusions of Law in the Hearing Report of Stephen B. Goldstein, Administrative Law Judge, dated March 21, 2003,

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Duane D. Runyon d/b/a/ Runyon Construction, Licensed Residential Builder, License No. 21-01-052410 (Lapsed), hereafter "Respondent", having been found in violation of Sections 604(c); 2411(2)(j) of the Michigan Occupational Code, 1980 P.A. 299, as amended, hereafter the "Code", MCL 339.604(c); MCL 339.2411(2)(j) 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 One Dollar and 00/100 Cents (\$1.00), a fine lower than the amount recommended by the Administrative Law Judge, because the board determined that the licensee's efforts to respond to this complaint warrants reducing the fine, said fine to be paid to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order and shall be paid by cashier's check or money order, with Complaint No. 24021 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's failure to comply with each and every condition of this Final Order shall result in suspension of any and all licenses held by Respondent, including Duane D. Runyon d/b/a Runyon Construction, License No. 21-01-052410 (Lapsed); Runyon Construction Company, Inc., Duane D. Runyon, Q.O., License No. 21-02-160347. No application for licensure, re-licensure or reinstatement shall be considered by the Department until the fine imposed by this Final Order is paid in full.**
 - 3. 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 of the payment imposed by this Final Order.

Failure to comply with the provisions of this Final order is itself a violation of the Code pursuant to Section 604(k) and may result in further disciplinary action.

Docket No. 2001-735

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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, MI 48909

This is the final page of a Final Order in the matter of Duane D. Runyon d/b/a/ Runyon Construction, Licensed Residential Builder, Complaint No. 24021, 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 LABOR & ECONOMIC GROWTH
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-735

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-99-3936-00

v

**Agency: Bureau of Commercial
Services**

**Duane D. Runyon
d/b/a Runyon Construction,
Respondent**

Case Type: Sanction

**Issued and entered
This 21st of March 2003
by Stephen B. Goldstein
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing by the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services (Petitioner) of a Formal Complaint, dated August 30, 2000, against Duane D. Runyon, d/b/a Runyon Construction (Respondent). The Complaint alleges violations of Michigan's Occupational Code, 1980 PA 299, as amended; MCL 339.2401; MSA 18.425 (2401)-(241 2) (Code).

A Notice of Hearing dated May 22, 2001 was issued and entered scheduling this matter for a formal administrative hearing to commence at 9:30 A.M. on July 10, 2001 in Grand Rapids, Michigan. The hearing commenced at that time and place as scheduled. However, because the hearing did not conclude on that date, an Order for Continuance was issued on July 13, 2001, continuing the hearing to August 21, 2001.

On July 17, 2001, Respondent requested an adjournment of the August 21, 2001 hearing date due to his attorney's unavailability. Petitioner voiced no oral or written objection to this request. Therefore, on July 20, 2001, an Order Granting Adjournment was issued, rescheduling the hearing to September 12, 2001.

For reasons unclear from the hearing file, the September 12, 2001 hearing never occurred. Thereafter, an Order for Continuance was issued on February 5, 2002, scheduling a continued hearing date for March 19, 2002.

On February 7, 2002, Respondent requested an adjournment of the March 19, 2002 hearing date due to his attorney's unavailability. Petitioner voiced no objection this adjournment request. Therefore, on February 12, 2002, an Order Granting Adjournment was issued, rescheduling the hearing to commence on April 16, 2002.

Due to a conflict in the Administrative Law Judge's schedule, the April 16, 2002 hearing was adjourned. Thereafter, an Order Granting Adjournment was issued, rescheduling the hearing to May 22, 2002.

On April 18, 2002, Respondent requested an adjournment of the May 22, 2002 hearing date because of conflicts in his attorney's schedule. Petitioner voiced no written objection to the adjournment request. Accordingly, on April 30, 2002, an Order Granting Adjournment was issued, rescheduling the hearing to commence on June 19, 2002. The June 19, 2002 hearing commenced as scheduled. However, because proofs were not concluded that day, an Order for Continuance, dated July 3, 2002, was issued scheduling a continued hearing date to September 3, 2002.

On August 26, 2002, Carol Meyer (Complainant) requested an adjournment of the September 3, 2002 hearing date because she was recovering from surgery. This request was followed by a supplemental request by Petitioner. Respondent voiced no objections to this request. Accordingly, on August 30, 2002, an Order Granting Adjournment was issued, rescheduling this matter to October 22, 2002.

The October 22, 2002 hearing commenced as scheduled. Proofs were completed on that day. However, it was agreed between the parties that the record would be left open for the submission of any and all written closing arguments until January 22, 2003.

The record reflects that no written closing arguments were filed by either party to this matter. Accordingly, the record was closed on January 22, 2003.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether Respondent violated the Code. The specific issues are whether Respondent violated MCL 339.601(1); MSA 18.425(601)(1); MCL 339.2411(2)(d), (j) and (m); MSA 18.425 (2411)(2)(d), (j) and (m); MCL 339.604(c); MSA 18.425(604)(c); and 1979 AC, R 338.1551(4). Those Sections of the Code and Rule provide as follows:

“Sec.2411. (1) * * *”

“(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 5I. (1) * * *”

“* * *”

“(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.”

“* * *”

SUMMARY OF EXHIBITS

During the hearings held in this matter, the following exhibits were offered, all of which were admitted into the record:

Petitioner Exhibit 1 - Building Inspection Report dated compiled by Daniel E. Jones, Wexford County Building Inspector, dated December, 1998. Attached to this exhibit is a supplemental Building Inspection Report compiled by Daniel E. Jones dated March 8, 2000.

Petitioner Exhibit 2 - copy of Building Code Section 315.4 Guardrail opening limitations.

Petitioner Exhibit 3 - copy of two (2) Proposal/Contracts between Carol Meyer and Runyon Construction Company, Inc., one dated July 28, 1998 and the other dated January 15, 1998.

Petitioner Exhibit 4 - copy of Sales Order No. 0769 from Runyon Construction Company, Inc., dated October 21, 1998, indicating a balance due from Carol Meyer of \$6,714.59.

Petitioner Exhibit 5 - copy of check issued by Carol Meyer to Runyon Construction, dated August 20, 1998, in the amount of \$8,000.00.

Petitioner Exhibit 6 - copy of check issued by Carol Meyer to Runyon Construction, dated October 15, 1998, in the amount of \$2,000.00.

Petitioner Exhibit 7 -copies of photographs of Carol Meyer's home, which Mrs. Meyer claims are photographs of work done by Respondent.

Petitioner Exhibit 8 - Statement of Complaint filed by Carol Meyer dated May 20, 1999.

Petitioner Exhibit 9 - Series of estimates from J & G Roofing & Siding in the total amount of \$16,448.00.

Petitioner Exhibit 10-REJECTED AND THEREFORE NOT ADMITTED.

Petitioner Exhibit 11 - Estimate from Pyramid, Inc., in the amount of \$350.00.

Petitioner Exhibit 12 - "Notice to Respondent" dated November 19, 1999.

Petitioner Exhibit 13 - Citizens Insurance Company of America documentation evidencing a claim submitted by Carol Meyer for water damage which was paid for by the insurance company.

Petitioner Exhibit 14 - photograph of the north side of Carol Meyer's home.

Respondent Exhibit A - Proposal compiled by Jet Construction and submitted to Respondent, in the amount of \$9,406.00.

Respondent Exhibit B - photographs taken by Respondent of Carol Meyer's home.

Respondent Exhibit C-1 - original Proposal/Contract between Respondent and Carol Meyer dated January 15, 1998.

Respondent Exhibit C-2 - original Proposal/Contract between Respondent and Carol Meyer dated July 28, 1998.

Respondent Exhibit D - copy of January 13, 1999 letter from Respondent to Carol Meyer requesting a list of items to be corrected. Also included in this document is a copy of the certified mail return receipt showing Carol Meyer signed for the letter on January 21, 1999.

Respondent Exhibit E - copy of February 12, 1999 letter from Carol Meyer to Respondent.

Respondent Exhibit F - copy of December 28, 1998 letter from Michelle Henderson, Citizens Insurance Company of America, to Respondent.

Respondent Exhibit G - copy of February 14, 2000 letter from Respondent to Sara E. Hernandez, Compliance Specialist, Department of Labor & Economic Growth, Bureau of Commercial Services.

Respondent Exhibit H - copy of August 30, 2000 letter from Respondent to Sara E. Hernandez, Compliance Specialist, Department of Labor & Economic Growth, Bureau of Commercial Services.

Respondent Exhibit I - May 23, 2000 Inspection Agreement compiled by Respondent as a proposed list of solutions to items complained of by Carol Meyer.

Respondent Exhibit J - copy of Proposal compiled by Kevin McIntosh, Athens Construction, Traverse City, Michigan, in the amount of \$7,972.00.

SUMMARY OF TESTIMONY AND FINDINGS OF FACT

It is undisputed that, on or about August 20, 1998, Respondent and Carol Meyer (Complainant) entered into an agreement for repair/replacement and renovations to an existing home built in approximately 1971. The terms of that agreement are embodied in Respondent Exhibits C-1 and C-2.

Robert D. Scarborough testified he is a Wexford County Building Inspector, and that, prior to his appointment in this position, was a licensed builder for approximately 25 years. Mr. Scarborough was recognized by this Tribunal as an expert in building construction.

Mr. Scarborough identified Petitioner Exhibit I as the building inspection report signed by Dan Jones, a now-retired Wexford County Building Inspector who performed the inspection of Complainant's home back in 1998 and 2000. Mr. Scarborough testified he also performed an inspection of Complainant's home on July

5, 2001, and formed his own conclusions as to condition of the home. Mr. Scarborough testified his conclusions were not separately documented in a report he compiled but rather, he merely confirmed what was already in Inspector Jones' report. Mr. Scarborough further indicated that, during his July 5, 2001 inspection, he wasn't influenced or constrained to any degree by the presence of Complainant.

With regard to the allegation that new shingles were installed over water damage, Mr. Scarborough testified as follows:

“Q Okay. So if we look at the second page of that report Mr. Jones had indicated there were new roof shingles put over water damage. Did you see anything at the house to indicate there were roof shingles put over water damage?

A What this all is, is workmanship.

Q Um-hum.

A Which is really, really subjective, okay. And new shingles being put over water damage, for me to say that those shingles were put over water damage I didn't see what was underneath them before they were put there. The only way I would be able to determine that is remove the shingles and look at the sheathing to see if it was water damaged.

Q And you didn't do that?

A No, I didn't take the lady's roof off.”

(July 10, 2001 TR at p. 20)

Mr. Scarborough testified he noticed the roof had dips and it appeared uneven, however, he could not definitively conclude whether this problem was the result of poor workmanship on the part of Respondent, because he had no idea of the condition of the roof before Respondent installed the shingles over it.

Mr. Scarborough testified the aluminum trim was buckled, and suggested it might be a workmanship issue. However, he tempered his opinion by stating that aluminum trim buckling is a common problem, especially on remodeling jobs, but that it should be replaced if possible.

With regard to the flashing between the wall and brick, Mr. Scarborough testified the flashing was crooked, but that it followed the contour of the wall itself, leading him to believe the wall was crooked. He indicated it is abnormal for the wall to be bowed, but that, with a little more time and effort, the flashing could have been installed a bit better.

With regard to the porch spindles, Mr. Scarborough testified they were unevenly spaced, which is a cosmetic issue, and also testified as follows:

“Q What did you notice about the porch spindles?”

A They’re spaced at 5 and ½ inches and in code, I provided you with a copy of the code that says they’re supposed to be no more than 4 inches between the spindles.

Q So that’s a violation of the code?

A Yes.”

“ * * * ”

“Q So you noticed what then, what was wrong with the spindles?”

A They were 5 and 1/2 inches between some of them.

Q And they should have been 4 inches?

A Yes.

Q Were they loose at all or were they fairly solid?

A The majority of them were solid, some were

loose.

Q Is the fact that some of them were loose, is that a problem?

A Yes, in this application they are, it is.

Q And why would they be loose like that?

A Some of them he placed — this type of spindle they should be fastened solid. There are certain railings that are supposed to spin and they have a hollow rail in the bottom so water can drain.

Q But this is not that kind?

A Right.

Q And is that a problem with them not being solid?

A Yes.

Q Do you see that also as a workmanship violation?

A Yes.”

(July 1Q, 2QQ1 TR at pp. 24-26)

Mr. Scarborough could not confirm any problem with the bottom step because, at the time of his inspection, it had been dry and there was no water pooled in this area.

With regard to the porch itself, Mr. Scarborough testified he noticed a few loose bolts. He indicated the bolts could be re-tightened, but opined the problem could have been prevented at the outset if the porch was installed differently. He elaborated as follows:

“Q Now was that, was the loosening of the bolts something that was inevitable or is that something that could have been prevented?

A Well, there are several other bolts in there that are tight, yes. So I guess, in my opinion, if they came loose they could be tightened back up.

Q But is there something wrong with the way the porch was done that would make them come loose like that?

A I would not have built the porch that way.

Q Why is that?

A Because it's laying right on concrete.

Q And why is that a problem?

A Because it can trap water and condensation underneath it.

Q Would that be a problem with the bolts and the wood?

A Yes.

Q And can you explain what that would be, what that would do, why that is a problem?

A It would trap moisture underneath it. It would never dry out. The water could freeze up under there, raise the boards. The proper way to have done that job would have been to tear that porch right off and build a new porch.

Q Okay."

(July 10, 2001 TR at pp. 27-28)

Mr. Scarborough testified the porch screws are rusting because they are apparently not galvanized and were not counter-sunk as they should have been. He stated it is a cosmetic issue, and not necessarily a code violation. With regard to the insulation underneath the siding, Mr. Scarborough testified he could not opine one way or another because he didn't remove the siding to see if there was or was not insulation

installed. Mr. Scarborough further testified he observed perhaps one or two spots where there were greasy fingerprints or spots on the siding.

On cross examination, Mr. Scarborough acknowledged that most, if not all of the items complained of could have been remedied without expending much time or money. He believes the situation between Respondent and Complainant merely deteriorated to the point where such repairs and/or replacements became impossible. He further indicated the roof has dips in it, but that with a house this age, which apparently was originally covered with 1/2-inch plywood, the roof structure will contain dips and waves. Mr. Scarborough opined that Respondent's incompetence consists of a few irregularities on the porch railing spindles, a few scratches in the soffits and exterior caulking along the brick, which he thinks, could have been applied a little better.

Mr. Scarborough testified that homeowners should know ahead of time what they are paying for. He elaborated as follows:

“A You make sure that [the] homeowner knows what they are getting for what they are paying. You know, they are getting exactly. And anything above and beyond that, just like the roof. I used to do quite a few re-roofs and it was always, now do you want these shingles taken off or do you want me to shingle over them? If I shingle over them you have got what you got. I'll put the shingles on.

Q And what does that do to the roof load?

A You can put one layer on. So you can end up with two layers of shingles on it. But, if you want me to take those shingles off, I'll give you a price for taking them off. Then, not until I take those off do I know what is underneath there. There may be — you might need all new sheathing, you might need one or two sheets, you might need — there might be some damage in the rafters that needs to be done. So I don't know, I can't give you a price on that until I know what it is. But there has to be — what always did was give

people a price, the worse case scenario. If I replace all the rafters and re-sheath the roof and re-shingle it, siding, soffit, this is what it'll cost you. If I re-shingle it this is what it will cost you. If it is somewhere in between that this is what it will. And that will be determined at that time.

Q Okay. So in the event that Mr. Runyon testifies that he informed Ms. Meyer about the roof and the bows in it, about taking the 1/2 plywood off and putting on 3/4 or 5/8 to take out the dips, and she says no, just replace the boards that are rotted or not good, would that have that have been acceptable according to the building code office?

A Sure. If it doesn't need to be replaced you don't have to replace it."

(July 10, 2001 TR at pp. 37-39)

Mr. Scarborough testified a builder cannot perform a function or certain task if a contracting homeowner is unable and/or unwilling to pay for those services.

Carol E. Meyer-Raymond (Complainant) testified she first contacted Respondent about renovating her home in January 1998. She indicated that, in August 1998, she signed a contract to have Respondent perform the work on her home. (*Petitioner Exhibit 3*)

According to Ms. Meyer, she contracted with Respondent to install new siding on the home, to build a roof over the existing upper front porch, and to install spindle railings around both porches. According to photographs, there are two (2) porches present in the front of this home. One of the porches is located in front of the main front door, and another porch is located just to the right of the main front door, in front of what appears to be a door located between the main house and garage. Ms. Meyer-Raymond further testified Respondent was to re-shingle the roof to make them

the shingles all the same color whereas before the shingles over the garage were a different color than the shingles over the main house.

Ms. Meyer-Raymond testified that she eventually discussed with Respondent the issue of installing insulation on her home before the new siding was installed. She indicated the Respondent told her the installation of insulation would cost an extra \$700.00, which she agreed to pay.

Ms. Meyer-Raymond indicated she came home from work one day and noticed Respondent's son and another individual starting to install the new siding without first installing the insulation. She stated at that point, she told Respondent's son and the other worker to stop working and to send Respondent out to the site, which he apparently did the next day.

With regard to the insulation issue, Ms. Meyer-Raymond testified as follows:

“Q What was your understanding that this \$700.00 was going to cover?

A It would be a fanfold is what they call it.

Q How much of the house was it supposed to cover?

A It was to cover all of the house except for the front of the garage. He was not going to do that end, the end of the garage up to the door. So it was just only the house and the back of the house.”

“* * *”

“Q Ms. Meyer, do you recall what the contract price was?

A The total?

Q Yes.

A It was about — it was originally \$15,000.00 but by the time we added the two windows it was \$800.00 and then the other for the insulation, the fanfold and stuff that was another six something so probably 16 something I think was the total \$16,700.00 or something like that.

Q Did you pay that price?

A No. I gave him \$8,000.00 when we signed the contract up front. And then in October he was telling me he needed more money, that he had to pay his workers, he to pay his insurance, and so could I give him some more money. I wrote him another check in October before it was completed for \$2,000.00 more. And at that point that's all that I had paid."

(See Petitioner Exhibits 5 and 6)

(July 10, 2001 TR at pp. 52-53)

Ms. Meyer-Raymond testified that, at the time she paid him the last \$2,000.00, Respondent was still working on the porch and railings, but the rest of the job had been completed. She indicated that she was unhappy about his performance at that point, and that she was concerned about the condition of the roof, stating it looked worse than it did before he replaced the shingles. Ms. Meyer-Raymond stated she told Respondent she would not pay him the balance of the contract price until she had an opportunity to have someone else come out and look at her roof. She claims the roof looks uneven and wavy and presented a series of photographs in support of her observations. *(See Petitioner Exhibit 7)*

Petitioner Exhibit 7 is a series of photographs of Ms. Meyer-Raymond's home, including pictures of the roof after the shingles were replaced. The Administrative

Law Judge notes there appear to be areas where the roof appears somewhat uneven and wavy in appearance.

Also apparent from a review of these pictures is that fact that the fascia running along the drip edge of the roof is buckled and uneven, and, in some areas, detached from the surface to which it is supposed to be attached. Ms. Meyer-Raymond testified the Respondent attempted to fix this problem on one occasion but was unsuccessful because it is still buckled and uneven, and, according to Ms. Meyer-Raymond, has become even worse than it was right after Respondent installed it.

The photographs also reveal that the aluminum trim installed on top of the brick is wavy and uneven in appearance. They also reveal the aluminum trim does not lay flat along the surface of the brick but appears to buckle upwards at points.

Ms. Meyer-Raymond testified she is unhappy with Respondent's caulking job. She believes it was merely "globbed" onto the surface of the trim, or smeared on with fingers. She believes the entire caulking job was done poorly and without much thought being given to appearance. The photographs (Petitioner Exhibit 7) depict numerous areas of the home where the caulking appears smudged and unevenly applied.

According to Ms. Meyer-Raymond, there was an incident where her home incurred water damage when Respondent tore off the old shingles from the roof in preparation for installing new ones. With regard to this incident, she testified as follows:

"A The very first day he ripped all the roof off, all the shingles and it poured down rain, I mean rained, poured. They are saying 10 or 15 minutes, excuse me, but they are very wrong. My son came into the house at about 10:30 at night and he said, 'mom, you better call Runyon because there's water pouring down

everywhere in the garage.' The garage, we had buckets, we had towels, we had everything we could find and there was water coming in everywhere around the back of the house, the garage, the dining room. I had towels; I had an old china cabinet I had to pull away from the wall. There was water coming in all through the bathroom, the bathroom window, the vent there was water pouring out of it in the bathroom. The cabinets in the bathroom had water. It was a nightmare."

(July 10, 2001 TR at pp. 78-79)

Ms. Meyer-Raymond testified she contacted the Respondent as soon as it became apparent as to what was causing the leaking. She acknowledges it was a severe storm, and that Respondent arrived as fast as he possibly could, and that, when he arrived, the leaking was alleviated to an extent when he re-tarped the roof.

The photographs reveal evidence of water stains on a bedroom wall, bathroom ceiling, living room, and dining room ceiling. The photographs also reveal that the drywall located in the ceiling area of the garage is pulling away from the plywood joists to which is attached. According to Ms. Meyer-Raymond, this is the result of moisture introduced into this area when the roof leaked.

The photographs further reveal a spot on the garage floor where it appears more soiled than the surrounding area. Ms. Meyer-Raymond testified this is the spot where Respondent placed his air compressor, and that it leaked oil on the garage floor. She stated that Respondent and/or his son represented they would clean up the area but never did, so she cleaned it herself. The photos also reveal fingerprints on an interior bedroom wall, and what appears to be a wire around the base perimeter of an outside wall. Ms. Meyer-Raymond claims Respondent and/or his crew never cleaned up the fingerprints. She also claims that, because of the manner in which they installed

aluminum trim, they shorted out a outside lamp which she asserts worked fine before the trim was installed.

Ms. Meyer-Raymond testified she was supposed to have a “sunburst” design installed on a gabled end over her garage. She indicated the Respondent knew about her desires because she mentioned it to him on a prior occasion. Ms. Meyer-Raymond indicated that, one day she came home from work and it had not been done correctly, but she never mentioned anything to him about it because, by that point, she had become completely disappointed with everything Respondent had done.

With regard to the roof, Ms. Meyer-Raymond claims that Respondent’s son commented to her that they had a hard time with her roof. She claims that, had Respondent approached her and told her the underlayment (plywood) was warped or in need of replacement, she would have replaced it. She claims that Respondent never mentioned anything to her about the plywood being either warped or in disrepair.

With regard to the insulation issue, Ms. Meyer-Raymond further testified as follows:

Q And the next item you have listed there was the insulation. What happened with the insulation, you paid him extra, you indicated earlier that you paid him extra to insulate the house. Did he insulate the whole house?

A He put fanfold and house wrap on it. The house wrap was put on after the windows had been put in, which they had already installed the windows and they were already installing the siding on the north side of the house. And I came home from work and there’s nothing on there. So I talked to Duane and we decided to put all he could put — he couldn’t put any insulation at this point, the only thing he could do is put some house wrap and some fanfold to break the wind and somewhat try to insulate

the house. So that's what we agreed upon. It was additional, \$670- 700, I think he said verbally.

Q Did he put it on the entire part that you expected him to put it on?

A No. The north side of the house where they had already started siding they went from that point where they left off, up.

Q How much of the siding had been put on when you talked to him about putting this house wrap on?

A Well, from the bottom of the house where the siding starts I would say approximately maybe three or four foot up the bottom of the north side of the house.

Q Do you know whether they took that siding off and then put insulation on?

A They did not. I specifically asked him to be sure that they did and they did not.

Q How do you know that they did not?

A I pulled the siding away to look to see if there is anything underneath it and there is nothing underneath it. At the north, it would be the northwest corner, it is just plain wood."

(July 10, 2001 TR at pp. 97-98)

With regard to having Respondent perform any repairs on items she was unhappy with, Ms. Meyer-Raymond testified as follows:

"A We looked at some of the things, some of the items that were on the list that I was unhappy with and, you know, we talked it over. We talked about some of the solutions. And I told him, okay, well, I would think it over. And then he returned with, it's called an inspection agreement, May 23" of 2000, it's dated, and he has listed several items that's agreeable to him

to fix, and then he wanted me to sign the second page. Well, as I read it over I wasn't in agreement with the same things that he had come up with, and at the bottom he states under credit that he had never figured to do the porch, which he didn't give me any credit for. And that right there is a lie. On his contract, I have a copy of it, he did write a bid to cover porches. And I read that and that just turned me right off. I said I don't want anything else to do with him. I don't want this man working on my house. He is dishonest and want no more further contact with him."

(July 10, 2001 TR at p. 101)

Ms. Meyer-Raymond testified that, after making her decision to discontinue working with Respondent on resolving the items she was unhappy with, she consulted with other construction companies and/or individuals and received varying estimates for repair/replacement of the problem items. (Petitioner Exhibits 9 and 11)

On cross-examination, Ms. Meyer-Raymond insisted she informed Respondent of her concerns regarding the roof and fascia within a short time after he completed the job in October, 1998. She acknowledges not having a written list of complaints for him to review until at least February 1999, and further acknowledged not giving Respondent any opportunity to repair and/or replace any items of which she was concerned after this time.

Ms. Meyer-Raymond also acknowledged the reason she didn't want Respondent to fix anything else on her home was because of his overall workmanship and, because he didn't fix the fascia in a manner with which she was satisfied. Ms. Meyer-Raymond claims she had the money to pay Respondent what owed on the contract. She therefore claims the reason she didn't want him to perform any further

repairs on her home was not because she still owed him money, but rather, because she could not trust he could perform any further work in a competent manner.

On further cross examination, Ms. Meyer-Raymond acknowledged she had no idea about if and/or when the shingles present on her roof before she had them replaced were ever replaced before that time, or if the plywood had ever been replaced for that matter. She indicated she purchased the house in 1986 and believes the house was built in 1978.

With regard to the installation of a sunburst siding design over the garage, Ms. Meyer-Raymond testified, under further cross examination, as follows:

“Q Did you pay for the cost of a sunburst?

A Well, I thought that I did.

Q Where in the contract — A It says to cover the gable end with siding to match or — yeah, with siding to match the siding on the house or something to that effect.

Q Does the siding on the gable match the rest of the house?

A It sure does.

Q Do you think it costs more money, time, labor and materials to put a sunburst in a gable end?

A Yes.

Q Did you offer to pay to have the sunburst done?

A I thought I already had.”

(July 10, 2001 TR at p. 131)

Ms. Meyer-Raymond acknowledges she didn't provide Respondent with a picture of the type of sunburst she wanted before he finished the project in October

1998. She indicated she thought that, because they had briefly discussed the issue, Respondent would approach her when he was ready to address this area, but as it turned out, he finished the gable end without discussing the issue with her first. In sum, Ms. Meyer-Raymond acknowledged the written contract between Respondent and herself makes no mention, or provides for, a sunburst design in the siding covering the gable end of her home.

Ms. Meyer-Raymond testified on further cross examination it is her desire that Respondent be held responsible for bearing the cost of replacing all of the plywood on her roof, all of the shingles, and all new felt and ice shield. She claims that there was nothing wrong with her roof before Respondent commenced work on it, and that, because of the thunderstorm which affected the roofing area after Respondent tore the shingles off; the roof now has severe problems. She therefore believes Respondent should be required to pay for a brand new roof.

Ms. Meyer-Raymond further believes that, because Respondent removed the gutters and down spouts to install new fascia material, and didn't re-install them, he should bear the cost of replacing and re-installing those items as well. Ms. Meyer-Raymond added that the Respondent threw the old gutters and down spouts in her backyard, and that she stacked them in a pile where they remained for 1 ½ years before she ultimately disposed of them.

During the Respondent's case in chief, he re-called building inspector Robert Scarborough to the stand. Mr. Scarborough reiterated that, as far as he can tell, the primary problems with Ms. Meyer-Raymond's home needing attention are the porch railings, the soffits and fascia. With regard to what he would charge a homeowner to replace/repair these items, Mr. Scarborough testified as follows:

“Q You heard her quote from J & G Roofing and Siding for some \$16,000.00 to correct her alleged problems with Mr. Runyon, did you hear that, were you in the room at the time?

A Yes.

Q From your observation and from your opinion, both as a builder and as an inspector, is that consistent or inconsistent with your opinion as to what it would take to fix the problems?

A In my opinion it would be a little inconsistent.

Q A little or a lot?

A Well, a lot. But see my position as a building inspector I don't get involved with contracts or price of what the homeowner pays to have something done, that's none of my concern.

Q I understand that. But from your testimony, and I guess that's the best thing that I can only bring you back to is, you said the three things that are problems, the railings, 10 pieces of soffit and 12 dozen pieces of fascia.

A Twelve dozen?

Q Excuse me. Twelve pieces of fascia.

A One dozen.”

“* * *”

“Judge Goldstein. Better question. If you were a builder having to replace all of these items what would you charge Ms. Meyer?

The witness: Probably between \$2,500.00 and \$3,000.00, and I would make out quite well.”

Q You would make quite a profit?

A Yes.”

(July 10, 2001 TR at pp. 155-1 57)

Mr. Scarborough further reiterated he could find no workmanship violation with regard to the roof, because he had no knowledge of the condition of the roof before Respondent performed work on it. With regard to this same issue, Mr. Scarborough testified one does not need to rip off an entire roof to fix problem areas. He indicated that certain problem areas could be addressed by ripping off shingles and plywood in that area, and then replacing that area with new plywood and shingles.

Ray Allen Jerome testified on behalf of Respondent at the July 10, 2001 hearing. Mr. Jerome is employed by Respondent as a carpenter. He testified that Respondent is fussy and insists on having jobs done correctly. He further testified that he personally has to re-do certain tasks because Respondent was not happy with the way he had done them at the outset.

With regard to his rapport with customers, Mr. Jerome testified that Respondent is always honest and up front with existing or prospective customers, and always goes out of his way to make his customers satisfied.

On cross examination, Mr. Jerome acknowledges he was not involved in the renovation on Ms. Meyer-Raymond's home and is otherwise unfamiliar with any of the problems with that job.

However, on further redirect examination, Mr. Jerome explained that he has done many roofing jobs, and that 1/2 inch plywood, such as that installed on the Meyer-Raymond home in the early 70's, warps over time due to things such as improper venting and age. He added that, based on his experience, plywood does not wave and buckle after getting wet on an isolated occurrence, but rather, warps, waves and buckles after many years of exposure to moisture, heat, frost and other weather-

related factors. He believes the plywood on the Meyer-Raymond home was wavy and buckled before Respondent ever started removing the old shingles.

Joe Traylor testified at the June 19, 2002 hearing that he's a general contractor whose familiar with the Respondent on a professional basis only. Mr. Traylor prepared an estimate for re-roofing Ms. Meyer-Raymond's home. (See Respondent Exhibit A) On voir dire examination, Mr. Traylor acknowledges he didn't place a visit to Ms. Meyer-Raymond's home before preparing the estimate, but rather, received all the information from Respondent. He testified, however, that his estimate is nonetheless accurate and reliable because he drives by Ms. Meyer-Raymond's home on a daily basis, and is otherwise familiar with the roof's dimensions.

Mr. Traylor testified that the re-roofing estimate prepared by J & G Roofing is inflated because it includes items, which he believes are unnecessary for what will remedy the problems with the roof. (See Petitioner Exhibit 9)

Mr. Traylor testified it is very common for older roofs to appear wavy. He indicated this could be the result of differences in truss straightness, as well as warping plywood and bending. He therefore believes that, despite the wavy appearance of the roof, Respondent did not violate workmanship standards.

Mr. Traylor further testified that fascia is composed of aluminum, which, by its nature, buckles and bends. He opined that, despite the rippled appearance of the fascia affixed to Ms. Meyer-Raymond's home, Respondent did not violate workmanship standards.

With regard to the aluminum trim on bricks issue, Mr. Traylor testified Ms. Meyer-Raymond's home is at least 24 years old, and that the studs are bowing which is causing the trim to appear uneven. He added that, as long as the area is caulked, the

trim is doing its job, that is, to prevent water from entering the brick and thereafter into the interior portions of the home.

Mr. Traylor indicated he and Respondent have had professional disagreements in the past, and that he is not opposed to telling Respondent he's erred or performed a certain task in an unsatisfactory manner. He believes, however, that in this case, Respondent has done nothing wrong.

Respondent testified on his own behalf that Ms. Meyer-Raymond contacted him about having remodeling work done on her home, but was unsure about exactly what she wanted done. He indicated this is why there were two different contracts drawn up. (*See Respondent Exhibit C-1 and C-2*). Respondent explained that Ms. Meyer-Raymond accepted the January, 1998 proposal, and that the July, 1998 proposal was precipitated when Ms. Meyer-Raymond decided she wanted other things done to her home.

With regard to the roof on Ms. Meyer-Raymond's home, Respondent testified that, when he removed the shingles, he noticed the plywood had no clips between the sheets to keep them from bowing and warping. Respondent testified that, in an effort to strengthen the roof system, he removed some of the plywood sheets, which he concluded were structurally sound but warped and wavy, then installed 2 X 4 wood pieces in the seams, and then re-installed the plywood over the 2 X 4 pieces to keep the plywood nailed down and even. Respondent further testified he re-nailed the entire roof because some of the existing nails were rotted. Respondent also testified he brought these issues to Ms. Meyer-Raymond's attention, and that he never thought she would be unhappy with the job, because, in his opinion, the roof appears flatter than it did before he started working on it.

Respondent testified that a severe wind and rainstorm hit the Buckley, Michigan area the night after they peeled the shingles off of Ms. Meyer-Raymond's roof. He indicated the roof was fully tarped but that the wind ripped the tarp off. He acknowledges water entered the home, but claims he did everything he could do to minimize the problem, to include securing the tarp with wood strips when he went back out to the home that same night.

Respondent testified he absolutely installed Tyvec house wrap around the heated portions of Ms. Meyer-Raymond's home, and insists he personally removed siding from the home to install the wrap himself.

Respondent testified he submitted to Ms. Meyer-Raymond his final bill on October 21, 1998, but Ms. Meyer-Raymond refused to pay it until she received from Respondent her warranty information. Respondent indicated he supplied Ms. Meyer-Raymond with the warranty information, but she still wouldn't pay his bill, claiming she had issues with his performance. Respondent further indicated Ms. Meyer-Raymond failed to provide him with an itemized list of what she was dissatisfied with until February 1999, some four months after he finished his work on the home. Respondent therefore believes he was never even given an opportunity to address Ms. Meyer-Raymond's concerns, because he had no idea what was wrong.

Respondent testified his bill with Ms. Meyer-Raymond remains outstanding, but that, even today, he is willing to go to Ms. Meyer-Raymond's home to address her concerns. Respondent further testified he has never intentionally left any job, including that of Ms. Meyer-Raymond, in a un-workman like condition.

Respondent testified that, in November 1999, he received notification from the State of Michigan that Ms. Meyer-Raymond had filed a formal complaint. He

indicated that, between February 1999, when Ms. Meyer-Raymond supplied him with a list of concerns, and November 1999, when he received the complaint, he was given no opportunity to address Ms. Meyer-Raymond's concerns. He therefore denies not responding to her complaints within a reasonable time.

Respondent stated he was given an opportunity to attempt resolving this matter through mediation. He reviewed with the building inspector the statement of complaint filed by Ms. Meyer-Raymond, and was told by the building inspector to contact Ms. Meyer-Raymond to work on resolving her concerns. Respondent indicated he eventually made contact with Ms. Meyer-Raymond in March 2000, but because she had undergone recent surgery, she was unwilling to meet with him at that time.

Respondent indicated that, in May 2000, he met with Rodney Raymond, Ms. Meyer-Raymond's husband. During this meeting, he learned that Rodney Raymond was also a builder, and they came up with a plan to address Ms. Meyer-Raymond's concerns. Respondent stated that, as a result of this meeting, and, as a result of his meeting with the building inspector, he devised a list of items he would use in addressing all of Ms. Meyer-Raymond's concerns. (See Respondent Exhibit I)

Respondent denies the shingles were installed over damaged underlayment. He stated that, the day after the rainstorm, which swept the Buckley area, he observed the plywood sheets, and decided they had not been damaged by the water, which penetrated the tarp. He also stated the shingles had to be replaced because the existing ones were at least 20 years old, were brittle and cracking, and would have become a major problem for this roof system had they not been replaced. Respondent also denies ordering more shingles than necessary and using some of them for another job. He explained that he ordered 99 bundles of shingles; an amount

he felt was necessary to cover a 3,000 square foot area, which, he claims, was the area of Ms. Meyer-Raymond's roof.

With regard to the aluminum trim issue; Respondent testified it is normal to have ripples. He explained the house was not originally built very well, and, in particular, the fascia board was installed in an inferior manner. Respondent stated he therefore had to install three bends in the aluminum before he could install it over the existing fascia. With regard to the aluminum trim over the bricks issue, Respondent testified that Ms. Meyer-Raymond wanted him to run the trim in such a way that he would be forced to re-do some of the brickwork, a task for which he did not contract, and was not paid for.

Respondent stated he reviewed the porch spindle issue and remains willing to fix the problem areas, however, because Ms. Meyer-Raymond refuses him access to the property, he's never been given an opportunity to do so. His comments were echoed with regard to the oil stains on the garage floor.

With regard to the shorted exterior light, Respondent opined the light probably shorted out because of the manner in which it was wired, but that he had nothing to do with the problem. With regard to the hole in the soffit, Respondent testified it's entirely possible the area could have been scratched, but that, if given an opportunity, he would be more than willing to address the problem.

Respondent testified he never contracted to install a sunburst peak over the garage or a front porch swing, which is why it was never done.

On cross-examination, Respondent acknowledged he was not licensed as a corporation at the time he entered into the contracts with Ms. Meyer-Raymond. He indicated he was incorporated at the time he entered into the contracts, and had applied

to the State of Michigan to have his license transferred to a corporate status, but final approval apparently had not yet been granted by licensing officials. He therefore acknowledges a violation of this provision of the Code.

Daniel Jones was the building inspector who compiled the inspection report admitted into the record as *Petitioner Exhibit 1*. Before retiring, Mr. Jones was employed by the Osceola County Building Inspection department.

Mr. Jones testified that all of the items contained in his inspection report were of a poor workmanship nature. He believes that Respondent's workmanship on the Meyer- Raymond job was generally poor, but had no specific memory of problems associated with the job.

On cross examination, Mr. Jones acknowledges he did not crawl up onto the roof of Ms. Meyer-Raymond's home to see if shingles were even installed when he performed his inspection. He also could not make any definitive conclusions of how water damage occurred to the inside of Ms. Meyer-Raymond's home, because he does not know exactly what happened.

On further cross examination, Mr. Jones admitted he initially concluded the shingles were improperly installed, simply because he observed water damage, but upon reflection, could not state that the shingles were improperly installed, because he could not tell from what he saw that the water damage was caused solely by Respondent's actions or inactions.

Mr. Jones acknowledges he constructed his inspection by writing down everything that Ms. Meyer-Raymond told him she didn't think was done correctly. With regard to the uneven and wavy appearance of the roof, Mr. Jones acknowledges not

being able to make any definitive conclusion, because he didn't know what the roof looked like before Respondent started working on it.

With regard to the aluminum trim over the bricks, Mr. Jones acknowledged that, if the underlying brick was raised and uneven, then the trim installed over this surface will also be raised and uneven. He stated this item was included on his inspection report because Ms. Meyer-Raymond wanted it to be.

Mr. Jones indicated the porch spindle issue could have easily been resolved, because it only needed to be tightened or replaced. He had no information about if and/or when Ms. Meyer-Raymond gave Respondent an opportunity to address the problems. He also acknowledged it is not a violation of code or workmanship rules for a builder to perform incorrectly the first time on items which can and should be addressed at a later point.

Mr. Jones testified he personally formed no opinions one way or another about Respondent's performance. He further stated that, in his personal opinion, Respondent did nothing wrong with regard to this job, and that Ms. Meyer-Raymond used him to substantiate her complaint to regulatory officials.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative proceedings. **8 Callaghan's Michigan Pleading & Practice**, 2d ed, § 60.48, p 280.

The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that Respondent violated the Code. **1990 AACS, R 339.1763.**

Violation of MCL 339.2411(2) (m)

By this charge, the Petitioner asserts that Respondent failed to perform the requirements of the Meyer-Raymond renovation contract in a workmanlike manner.

Michigan case law appears to support the proposition that, under certain circumstances, workmanship issues are not cured merely because a contracting party later corrects what he was under an initial duty to do right the first time. In **Arndt v State of Michigan** 147 Mich App 97(1985), the Court of Appeals specifically held that a builder is under a duty to perform the terms of a contract in a workmanlike manner from the outset of the contract until its terms are satisfied. The **Arndt** court also held that a homeowner preventing a builder from correcting the problem is not necessarily a complete defense to the workmanship violation itself. But implicit in this opinion is the notion is that, under certain circumstances, homeowner interference is a defense, especially when the homeowner, without justification, prevents a licensed builder from addressing workmanship concerns.

The **Arndt** case involved a builder who acknowledged his performance was an example of poor workmanship, who believed he was prohibited from making repairs to the subject matter property. He relied upon this mistaken belief in justifying his decision not to make any repairs to the property, and was found guilty by the Administrative Law Judge in this case of violating workmanship standards. This case also involves structural defect issues, which, in this Judge's opinion, significantly guided the Court's opinion.

In the case at bar, Respondent fully contests any allegation that his work was of poor workmanship. In addition, he was delayed and actively prevented by Ms. Meyer- Raymond from even beginning to address her concerns. This finding and conclusion is supported by the fact that she failed to provide Respondent with a written list of her concerns until February 1999; some four (4) months after Respondent finished the job. Then, when Ms. Meyer-Raymond finally provided the list of concerns,

she denied Respondent any ability to address the problems, simply because she didn't agree on his method of addressing them.

Furthermore, it is not a foregone conclusion that Respondent's performance was deficient to begin with. Mr. Jones acknowledged he listed in his inspection report everything Ms. Meyer-Raymond stated she was unhappy with. He then concluded in that report that the items were workmanship violations. Yet, on cross-examination, he opined that Respondent did nothing wrong. Mr. Jones was either lying, or his memory was woefully deficient. Either way, his credibility is significantly suspect.

Roof

The evidence presented supports a conclusion that the roofing system on the Meyer-Raymond home was problematic before Respondent ever began working on it. Both the plywood and existing shingles were at least 25 years old. The plywood was warped and wavy, and, although for the most part structurally sound, was in need of replacement.

The contract between Ms. Meyer-Raymond and Respondent did not call for Respondent to have the plywood stripped off and replaced; it called for Respondent to have new shingles installed over existing plywood. Thus, the roof may now appear wavy and uneven by virtue of the fact that the old plywood is wavy and uneven. The fact that Respondent installed new shingles over old plywood does not mean that, because the roof now appears wavy and uneven, Respondent is guilty of workmanship violations.

Therefore, no violation is found with regard to the roof issue.

Aluminum Trim over Brick

With regard to the aluminum trim issue, the existing brick work was old, and, in some spots, crooked to the naked eye. Thus, the trim installed over it is also crooked. The contract between Respondent and Ms. Meyer-Raymond did not call for Respondent to remove and re-install brick; it called for trim to be installed over existing brick.

Therefore, no violation is found on this issue.

Aluminum Trim over Fascia

The evidence presented indicates the existing fascia boards were old and in need of repair. The contract between the parties called for Respondent to replace existing fascia board with new board, and then install aluminum over the new board.

After the trim was installed, it apparently began to appear buckled and bent in spots. However, the credible testimony of Joe Traylor establishes that the buckles and bends were not serious, did not constitute poor workmanship, and that they could have been adequately addressed by Respondent had he been given an opportunity to do so. Because he was not given that opportunity, no violation is found on this record.

Porch Spindles

It appears uncontested that the spindles installed on the porch railings were either incorrectly spaced, loose, or both. Respondent acknowledges the spindle problem, and indicated he remains willing to address it, even today. The evidence presented further supports a conclusion that Respondent was never given an opportunity to address the problems with the porch spindles. Therefore, in accordance with this Judge's interpretation of the law set forth in Arndt a finding of poor workmanship is considered by this Judge to be inappropriate under these circumstances.

Insulation

There appears to be no dispute over whether insulation was requested and paid for by Ms. Meyer-Raymond. The dispute centers on where and/or how much insulation was to be installed. The written contract between the parties makes no mention of insulation installation whatsoever. In addition, there is no written contract modification expressing the parties' intention regarding this issue. Therefore, the oral testimony of the parties controls.

The testimonial evidence presented supports a conclusion that insulation was installed by Respondent as requested. If Ms. Meyer-Raymond believed that insulation should have been installed in areas where it wasn't, then she should have assured that the modification to this contract was in written form.

Under the Code, Respondent is charged with assuring that modifications to the contract are in writing. However, he was not charged in the Complaint for failing to do so and therefore will not be found in violation of this provision.

Accordingly, no workmanship violations are found regarding this issue.

Fingerprints on Siding; Oil Spot on Garage Floor; Soffit Material Above Porch Dented/Scratched; Nails in Waterbed

It is entirely possible that greasy fingerprints appeared on the siding, and that an oil spot appeared on the garage floor immediately after Respondent finished the Meyer- Raymond job. It is also possible that nails fell onto the waterbed during construction, and that the soffit material was dented and/or scratched as well.

However, these situations can and do occur, and, in this Judge's opinion, are not workmanship issues. Rather, they constitute clean up/punch list items which most likely would have been addressed had Respondent been given the opportunity to

do so. Because Respondent was not afforded an opportunity by Ms. Meyer-Raymond to clean the fingerprints off of the siding, or to clean up the oil on the garage floor, and, because these are punch list issues for which a contractor is typically given the opportunity to address within a reasonable period of time, no violation is found on this record.

Outside Mercury Light

The evidence presented fails to establish, by preponderance, the condition of this light before Respondent began work on Ms. Meyer-Raymond's home. It is entirely possible the light was beginning to fail at or around the time Respondent was performing the terms of this contract. Without any expert testimony regarding how and/or why the light failed, any conclusion that Respondent violated workmanship standards is inappropriate under the circumstances.

Credit Issues; Other

Inspector Daniel Jones' inspection report lists the following items, all of which he classified as workmanship violations: **no credit given for little porch not covered in wood; only \$150 given for wood around soffit; asked for but not done: sunburst in peak, front of house; trim on brick front to be done differently; hardware for front porch swing-nothing; gutters removed and not replaced-left in yard; charged for 99 bundles of shingles (too many).**

Inspector Jones testified he compiled his inspection report based solely upon what Ms. Meyer-Raymond told him she was unhappy with. Inspector Jones also testified he formulated no conclusions regarding whether Respondent violated any workmanship standard with regard to the above-listed items.

Without any definitive conclusion by Inspector Jones that Respondent violated workmanship standards, this Judge cannot justify a conclusion that Respondent violated such standards. Furthermore, Inspector Jones' admission that he compiled his report based upon what Ms. Meyer-Raymond told him she was unhappy with, and not based upon his own personal observations, casts considerable doubt on his credibility as a witness in this proceeding.

For all of the above reasons, this Judge concludes that the Petitioner has failed to establish, by a preponderance of the evidence, that Respondent has violated MCL 339.2411 (2) (m).

Violation of 1979 AC. R 338.1551 (4)

By this charge, the Petitioner alleges that Respondent failed to correct the items contained in Inspector Jones' report within a reasonable time.

As previously stated in this Hearing Report, it is apparent from a full review of the evidence presented that Respondent was actively prevented by Ms. Meyer-Raymond from addressing what were primarily "punch list" issues which arose following Respondent's completion of the project.

This Judge cannot justify a conclusion that Respondent failed to address these issues within a reasonable time if he was precluded from doing so by the complaining homeowner.

Accordingly, the Petitioner has failed to establish, by a preponderance of the evidence, that Respondent has violated 1979 AC, R 338.1551 (4).

Violation of MCL 339.2411(2) (d)

By this charge, the Petitioner alleges that Respondent failed to complete the renovation project on Ms. Meyer-Raymond's home in accordance with plans and specifications.

A review of the evidence presented reveals no written plans or specifications other than what is contained in the written agreement between the parties. That agreement is written in broad terms, and it contains no detailed specifications by which this Judge can conclude that the Respondent, either in form or substance, failed to honor.

It is concluded that Respondent performed all aspects of the written agreement between the parties. He replaced the existing fascia board with new wood and covered it with aluminum trim; he installed vinyl siding on the entire home; he installed a roof over the existing front porch and installed a spindled railing around that porch; he installed new shingles, ice guard and felt over the existing roof structure, but did not replace the plywood sheathing because he was not paid to do so, and, in fact, the written agreement does not obligate him to do so.

If Ms. Meyer-Raymond wanted Respondent to perform other tasks, she should have assured that any changes to the January 1, 1998 and July 28, 1998 agreements were placed in written form. The Parol Evidence Rule precludes her from now coming before this Tribunal to assert claims against the Respondent that he agreed to perform other tasks, which are not contained in the written agreement between the parties.

For the above reasons, this Judge concludes the Petitioner has failed to establish, by a preponderance of the evidence, that Respondent violated MCL 339.2411 (2) (d).

Violation of MCL 339.2411(2) (j)

By this charge, the Petitioner asserts that Respondent entered into the subject matter renovation contract with Ms. Meyer-Raymond as Runyon Construction, Inc., a corporation, which at the time the contract was signed, was un-licensed by the Department of Labor & Economic Growth, contrary to MCL 339.601(1).

Respondent acknowledged on the record he did not realize that, at the time he entered into this contract, his corporate application for licensure was not yet approved. It was and is his responsibility to assure that appropriate licensure was in place at the time this contract was signed.

Accordingly, the Petitioner has established, by a preponderance of the evidence, that Respondent violated MCL 339.2411 (2) (j).

Violation of MCL 339.604(c)

By this charge, the Petitioner asserts that Respondent has violated a rule of conduct in practicing his occupation.

By virtue of Respondent's violation of MCL 339.2411(2)(j), he has also violated this provision of the Code.

Accordingly, the Petitioner has established, by a preponderance of the evidence, that Respondent violated MCL 339.604(c).

SUMMARY

The preponderance of the evidence presented in this case establishes that Respondent has not violated MCL 339.2411 (2)(d) or (m), or 1979 AC R 338.1551(4).

However, the preponderance of the evidence establishes the Respondent violated MCL 339.2411 (2) (j), and therefore MCL 339.604(c).

RECOMMENDED SANCTIONS

This Administrative Law Judge recommends that the following sanctions be included:

1. That Respondent be assessed a Civil Fine in the amount of \$250.00 for his violations of the Code.
2. That Respondent's license be suspended if the fine has to been paid in full within sixty (60) days of the Board's Final Order.
3. That Respondent be issued no new license(s) in either an individual or corporate capacity until he has fully complied with the Board's Final Order.

Stephen B. Goldstein
Administrative Law Judge