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

In the matter of

Bureau of Commercial Services,
   Petitioner
v
Andrews Construction
David Lynn Andrews, Q.O.,
   Respondent
_____/

Docket No. 2001-75

Agency No. 21-99-4720-00

Agency: Bureau of Commercial Services

Case Type: Sanction

Issued and entered
this 28th day of March 2001
by James L. Karpen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracy Hampton, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Andrews Construction, David Lynn Andrews, Q.O., nor an attorney on behalf of Respondent appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated January 11, 2001, scheduling a hearing for February 22, 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, Andrews Construction, David Lynn Andrews, Q.O., violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et. seq.*; MSA 18.425(101) *et. seq.* (Code).

After one adjournment, the hearing commenced on March 19, 2001. 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 August 17, 2000, are deemed true.

During the March 19, 2001 hearing, no exhibits were accepted into the record.

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)(c); Section 604(c); and 1979 AC R 338.1551(2). 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.

***

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

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 338.1551(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. He shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

FINDINGS OF FACT

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

1.   On or about January 26, 1999, Respondent entered into a contract with Dawn Brown 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 has failed to account for or remit monies received from Dawn M. Brown.

4.   Respondent failed to respond to the complaint in a timely manner.

5.   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 has failed to account for or remit monies received from Dawn M. Brown, in violation of Section 2411(2)(c) of the Code.

4.   Respondent failed to respond to the complaint in a timely manner, in violation of Rule 1551(2).

5.   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.   Based upon the above violations of the Code and rule, a civil fine in the amount of $7,000.00 be assessed against Respondent.

2.   Any and all licenses under the Code held by Respondent be suspended until such time as the fine has been paid in full.

_____
James L. Karpen
Administrative Law Judge