

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

In the matter of

Docket No. 2002-556

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-00-6311-00

v

Agency: Bureau of Commercial Services

**William Theodore Wilson,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 16th day of May, 2002
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracey Hampton Yarborough, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, William T. Wilson, nor an attorney on behalf of Respondent appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated March 29, 2002, scheduling a hearing for May 15, 2002. The Notice of Hearing was mailed to the Respondent's last known address. Further, the Notice of Hearing informed the Respondent that if he 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.* (APA).

The Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *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 October 15, 2001, are deemed true.

During the May 15, 2002 hearing the following five exhibits were accepted into the record:

Exhibit 1: The Construction Agreement between Respondent and Complainant, JoAnn Kingsley.

Exhibit 2: Checks issued by Complainant to Respondent.

Exhibit 3: Various checks from Complainant which are noted with arrows reflecting amounts paid to correct Respondent's defective workmanship totaling \$2,400.00.

Exhibit 4: An invoice to Complainant in the amount of \$626.73 to repair Respondent's defective workmanship.

Exhibit 5: An estimate submitted by Complainant of the cost of correcting Respondent's defective workmanship as to the items circled for a total amount of \$2,855.00.

ISSUES AND APPLICABLE LAW

The specific issue in this case are whether Respondent violated the following sections of the Code and the rules promulgated under the Code: Sections 604(c) and 2411(2)(m) of the Code and 1979 AC, R 338.1551(2), (4) and (5).

These sections and rule state, in pertinent part:

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.

* * *

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:

* * *

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

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 a portion thereof is not acknowledged by the licensee as being justified, the department shall notify the complainant of the area of disagreement.

* * *

(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.

(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 upon the record, I make the following findings of fact:

1. Respondent is licensed as a residential builder under the Code.

2. On October 18, 1999 Respondent entered into a contract to perform residential builder's services with the Complainant JoAnn Kingsley.
3. Respondent failed to perform the requirements of the contract in a workmanlike manner.
4. Respondent failed to comply with the local building code.
5. Respondent failed to correct his defective workmanship within a reasonable time.
6. Respondent failed to respond to the complaint in a timely manner.
7. Respondent violated a rule of conduct in practicing his 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: Sections 604(c) and 2411(2)(m) and Rule 338.1551(2), (4) and (5).

RECOMMENDATIONS

Based upon the findings of fact and the conclusions of law, I recommend that Respondent pay a civil fine in the amount of \$1,500.00, make restitution to the Complainant in the amount of \$5,881.73 and that his license be suspended if the fine and restitution are not paid within 60 days of a final order in this matter.

James L. Karpen
Administrative Law Judge