

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

In the matter of

Docket No. 2002-649

**Bureau of Commercial Services,
Petitioner**

Agency No. 21-01-3617-00

v

Agency: Bureau of Commercial Services

**Ricky D. Hislop
dba Rising Sun Builders,
Respondent**

Case Type: Sanction

_____ /

**Issued and entered
this 25th day of June, 2002
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Lisa Funkhouser, Attorney at Law, appeared on behalf of the Petitioner, Bureau of Commercial Services. Neither Respondent, Ricky D. Hislop, nor an attorney on behalf of Respondent, appeared at the hearing.

This proceeding was commenced with the filing of a Notice of Hearing dated April 16, 2002, scheduling a hearing for June 21, 2002. 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.* (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 counsel 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 February 13, 2002, are deemed true.

ISSUES AND APPLICABLE LAW

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

* * *

(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 to 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

1. Respondent, Ricky Hislop, has at all relevant times been licensed as a residential builder under the Code until May 31, 2001 when his license lapsed.
2. On September 21, 2000, Respondent entered into a contract to perform residential builder's services with Janet Herron and Phronsie Dusseau.
3. Respondent, while performing under the contract, failed to comply with the local building code.
4. Respondent failed to perform the requirements of the contract in a workmanlike manner.
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 (2d ed) Section 60.48, page 230.

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 District, 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 sections of the Code and the rules promulgated thereunder as alleged in the Complaint: 604(c); 2411(2)(m); Rule 338.1551(2), (4) and (5).

RECOMMENDATIONS

I concur in the recommendation of Petitioner's counsel that Respondent's license be revoked. Since Respondent filed for bankruptcy, no restitution is requested..

James L. Karpen
Administrative Law Judge

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS**

In the matter of:

**RICKY D. HISLOP
D/B/A RISING SUN BUILDERS
License No. 21-01-112507 (Lapsed)**

**Docket No. 2002-649
Complaint No. 21-01-3617-00**

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the “Board”, on March 4, 2003 and

WHEREAS, the Board having considered the of the Findings of Fact and Conclusions of Law in the Hearing Report of James L. Karpen, Administrative Law Judge, dated June 25, 2002,

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Ricky D. Hislop d/b/a/ Rising Sun Builders, Licensed Residential Builder, License No. 21-01-112507 (Lapsed), hereafter “Respondent”, having been found in violation of Sections 604(c); 2411(2)(m) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the “Code”, MCL 339.604(c); MCL 339.2411(2)(m) and Rules 51(2); 51(4) and 51(5) of the State Board of Residential Builders and Maintenance & Alteration Contractors General Rules, *promulgated hereunder*, being 1979 AC, R 338.1551(2); 1979 AC, R 338.1551(4) and 1979 AC, R 338.1551(5) 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 Thousand Dollars and 00/100 Cents (\$1,000.00), said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the date of mailing of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 21-01-3617-00 clearly indicated on the check or money order, made payable to the State of Michigan and sent to the Department of Consumer & Industry Services, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.**

- 2. Respondent Ricky D. Hislop d/b/a Rising Sun Builders, Licensed Residential Builder, License No. 21-01-112507 (Lapsed) shall be and hereby is REVOKED effective the mailing date of this Final Order. Any and all other Article 24 licenses of Respondent shall be and hereby are immediately revoked effective the mailing date of this Final Order, MCL 339.2405(3). No application for licensure, relicensure 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 Consumer and Industry Services, Bureau of Commercial Services, Audit Unit, P.O. Box 30018, Lansing, Michigan 48909, proof in a form acceptable to the Department of compliance with each and every requirement of this Final Order.**