

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

**DEPARTMENT OF LABOR
& ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES
ex rei KEITH SALCEDO**

**Docket No.2003-1448
Complaint No.10380
Former No.21-01-6197-00**

Complainant,

v

**PAUL H. MILLER
License No.21-01-123358**

Respondent

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on September 14, 2004;

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of C. David Jones, Administrative Law Judge, dated July 13, 2004;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Paul H. Miller, Licensed Residential Builder, License No.21-01-123358, hereafter "Respondent", having been found in violation of Sections 604(c); 2411(2)(a); 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)(a); MCL 339.2411(2)(m) and Rules 33(3); 51(5) of the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors General Rules, *promulgated hereunder*, being 1979 AC, R 338.1533(3); 1979 AC, R 338.1551(5);

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. The Board reviewed the hearing report and determined that the fine should be reduced from the amount recommended in the hearing report based upon the record provided. Respondent shall pay a FINE in the amount of Two Thousand Dollars and 00/100 Cents (\$2,000.00) to the Department of Labor & Economic Growth within sixty (60) days from the mailing date of this Final Order. Said fine shall be paid by casher's check or money order, with Complaint No.10380 clearly indicated on the check or money order, made payable to the State of Michigan and mailed to the Department of Labor & Economic Growth, Bureau of Commercial Services, Enforcement Division, P .0. Box 30185, Lansing, Michigan 48909.**
- 2. Respondent shall make RESTITUTION to Keith Salcedo in the amount of One Thousand Five Hundred Twenty-Two Dollars and 00/100 Cents (\$1,522.00), payable to Keith Salcedo and mailed to Keith Salcedo, 921 Cedar Street, Sault Ste. Marie, MI 49783, within Sixty (60) days from the mailing date of this Final Order.**
- 3. Respondent's failure to comply with each and every condition of this Final Order shall result in suspension of any and all Article 24 license(s) held by Respondent, MCL 339.2405(3). Respondent Paul H. Miller may not serve as the Qualifying Officer of any licensed corporate entity while his individual license(s) are in suspended status. No application for licensure, re-licensure or reinstatement shall be considered by the Department until the fine and restitution imposed by this Final Order are paid-in-full.**
- 4. Respondent shall submit in writing to the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Audit Unit, P .0. 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.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this _____ day of _____, 2004.

**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**

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF HEARINGS**

In the matter of	Docket No.	2003-1448
Bureau of Commercial Services, Petitioner	Agency No.	10380
v	Agency:	Bureau of Commercial Services
Paul H. Miller, Respondent	Case Type:	Sanction
_____ /		

**Issued and entered
this 13th day of July, 2004
by C. David Jones
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint against Respondent on December 20, 2002. On November 18, 2003, a Notice of Hearing was mailed scheduling the hearing to commence on January 6, 2004, at the Mackinac County Courthouse, 100 Marley Street, St. Ignace, Michigan.

On January 6, 2004, an Order Granting Adjournment was issued and entered rescheduling the hearing to commence on February 24, 2004. On February 9, 2004, an Order for Adjournment was issued and entered rescheduling the hearing to commence on February 23, 2004.

On February 23, 2004, the hearing commenced as scheduled. Petitioner was

represented by Elizabeth Band, Administrative Law Specialist. Respondent represented himself. The following witnesses testified for Petitioner: Steven M. Akkanen, Building Inspector; and Keith Salcedo, homeowner.

On March 2, 2004, an Order for Continuance was issued and entered, rescheduling the hearing for April 14, 2004.

On April 14, 2004, the hearing commenced as scheduled. Petitioner was represented by Elizabeth Band, Administrative Law Specialist. Respondent represented himself. Keith Salcedo, concluded his testimony for Petitioner. The following persons testified for Respondent: David Komarnizki, employee of Respondent; and Paul H. Miller, Respondent.

Over the two days of hearing, the following exhibits were admitted into evidence:

Petitioner's Exhibit 1:	Complaint of Homeowner
Petitioner's Exhibit 2:	Building Inspection Report
Petitioner's Exhibit 3:	Contract
Petitioner's Exhibit 4:	Estimate for Repair (Ware)
Petitioner's Exhibit 5:	Plumbing Bill
Respondent's Exhibit A:	5/14/98 Letter from City
Respondent's Exhibit B:	6/12/98 Letter from City
Respondent's Exhibit C:	6/18/01 Letter from Homeowner
Respondent's Exhibit D:	Check #2860
Respondent's Exhibit E:	Contract (signed by Homeowner)
Respondent's Exhibit F:	Respondent's Answer to Building Inspection

Respondent's Exhibit G: Estimate for Repair (Hammerhead)

ISSUES AND APPLICABLE LAW

The applicable law in this case is the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.*, and the General Rules, 1979 AC, R 338.1511-1553.

The issues in this case are as follows:

1. Did Respondent commit poor workmanship contrary to MCL 339.2411(2)(m)?
2. Was Respondent's construction not in accordance with the building code, contrary to R 338.1551(5)?
3. Did Respondent fail to correct a complaint justified by the local building inspector, contrary to R 338.1551(4)?
4. Did Respondent abandon his contract without legal excuse, contrary to MCL 339.2411(2)(a)?
5. Did Respondent fail to reduce changes in the agreement to a sufficient writing, contrary to R 338.1533(3)?
6. Did Respondent violate a rule of conduct of an occupation, contrary to MCL 339.604(c)?
7. What are the appropriate penalties for these violations?

FINDINGS OF FACT

Contract

1. In May 1998 and June 1998, the City of Sault Ste. Marie informed the homeowner that his home was in a state of disrepair, and legal action would be initiated unless he corrected the deficiencies. The homeowner arranged for a bank loan and requested bids.

2. Respondent submitted a bid for the home repair on March 5, 1999, and the homeowner accepted it on March 30, 1999, to create a contract (Respondent's Exhibit C). The contract provided for Respondent to perform listed work in the kitchen, second floor, and main house. The price was \$19,500, which would go up by \$1,500, "In case of rotten areas in main house." The contract did not specify when construction should begin or be completed. Petitioner has not established that Respondent orally estimated that he would complete the work in six weeks.

Implementation of Contract

3. The homeowner paid Respondent a total of \$19,024.70 in nine installments from March 30, 1999, to April 25, 2001. However, on August 18, 1999, Respondent refunded to the homeowner \$500, because the homeowner had agreed to do the painting and staining himself. Respondent, therefore, received a net amount of \$18,524.70.

4. Respondent began work on the house about the time the building permit was issued May 11, 1999. The bulk of the work he did was done by early 2000, however, work remained. Respondent's last work on the house was in late August 2001.

5. There were at least two changes to the contract involving money. As noted above, Respondent refunded \$500 to the homeowner (Respondent Exhibit D) because the homeowner agreed to do the painting and staining himself. Also, Respondent and the homeowner agreed that the homeowner would hire someone else to do plumbing, and the homeowner would hold back a certain amount of the contract price (Respondent alleged \$900), which was done. Respondent did not put these contract changes into a writing dated and initialed by the parties. Respondent denied knowledge of any responsibility to create such a writing.

6. As to changes to the contract not involving the payment of money, Respondent and the homeowner testified to the following significant changes (in addition to a few others): instead of replacing the kitchen floor with concrete, it was replaced with wood and replacement of the front and rear doors (including the French doors) Respondent also did not put these changes into writing.

7. The homeowner testified Respondent agreed to many other changes, which Respondent denied. These are dealt with below.

8. Petitioner has not established that the homeowner and Respondent exercised the contract option to add \$1,500 to take care of rotten areas.

9. In the spring of 2001, Respondent did not show up often to work on the house. On June 18, 2001, the homeowner sent Respondent a letter by certified mail (Respondent Exhibit C) requesting Respondent complete all work on an enclosed list by July 22, 2001, or the homeowner would have another contractor finish the work. Respondent came

to the house and did some work in late August, 2001, while the homeowner was gone. After this, the relationship between the homeowner and Respondent broke down, and the homeowner would not let Respondent back on his property.

Inspection

10. The house was inspected by the local building inspector on August 20, 2001. The inspector issued his report on or about January 14, 2002, listing many alleged violations (Petitioner Exhibit 2). On or about February 23, 2002, the homeowner filed his complaint with this Bureau (Petitioner Exhibit 1).

11. On or about April 1, 2002, Respondent filed an Answer (Respondent Exhibit F) to the Inspection Report. Respondent disputed, or denied responsibility for most items. However, he did accept responsibility for some items.

12. The following items listed in the Inspection Report (Petitioner Exhibit 2) are not violations, and are not Respondent's responsibility because they were not part of the written contract, and Petitioner has not established that Respondent orally agreed to perform them. Respondent denied agreement, and because of the expense, it is unlikely he agreed to do them free.

- a. Exterior Complaints: 3a; 7 (second receptacle only); 9; 13
- b. Interior Complaints; Kitchen: 1 (lack of interior finish only); 2; 4 (painting only); 5 (painting only); 7
- c. Interior Complaints, Dining Room: 1, 2, 3, 4
- d. Interior Complaints, Living Room: 1, 2, 3

- e. Interior Complaints, Bathroom (Second Floor): 1 (painting only); 2 (painting only)
- f. Interior Complaints; North Bedroom (First Floor): 1

Exterior Complaints

13. (Item 1a) As of the inspection August 20, 2001, the flashing at the intersection of the kitchen roof and south wall of the house was improperly installed over the shingles. This was a violation of Code Section 1508.1, and poor and substandard workmanship. Shortly after inspection, Respondent corrected this problem.

14. (Item 1b) As of August 20, 2001, on both slopes of the kitchen roof and the north bedroom roof shingles were damaged and broken. This could have been caused by the homeowner pounding on shingles to break ice, and Petitioner has not established Respondent is responsible.

15. (Item 1b) On the kitchen roof and north bedroom roof the homeowner contended Respondent failed to install an ice and water shield, but the inspector could not verify this during his inspection, and the violation is unproven.

16. (Item 2) As of August 20, 2001, at the intersection between the west wall and the kitchen roof, Respondent had not installed the flashing properly. This is a violation of Code Section 1405.3.10, and poor workmanship. Shortly after the inspection, Respondent corrected this problem.

17. (Item 2) As of August 20, 2001, at the intersection between the west wall and the kitchen roof, Respondent had installed the vinyl siding poorly, allowing rain to enter.

This is a violation of Code Section 1403.3, and poor workmanship.

18. (Item 3b) the homeowner claimed Respondent covered the existing vent in the south gable with siding but the inspector could not verify this, and the violation is unproven.

19. (Item 4) As of August 20, 2001, on the main house, on the south wall between the second floor windows, Respondent had left the fasteners loose and the siding was loose and not weather tight. This was a violation of Code Section 1403.3 and poor workmanship. After inspection, Respondent corrected this.

20. (Item 5a) Respondent agreed to also install French doors in the house, which was a change to the contract that Respondent failed to put into writing. Respondent agreed to install door hardware and screens (testimony of homeowner credited over Respondent). As of August 20, 2001, Respondent had failed to install the door hardware and screens.

21. (Item 5a) As of August 20, 2001, on the French doors, Respondent had poorly installed the trim around the doors (with poorly fitting joints); Respondent had failed to put a weather resistant coating on the trim; and Respondent failed to put a weather resistant coating on the wood framing below the threshold. This was poor workmanship and a violation of Code Section 1403.3.

22. (Item 5b) Respondent agreed to install an east wall door, including a storm door as a change to the contract, but failed to install a storm door. Respondent agreed as part of the original contract to install an east wall bedroom window, but failed to install the

screen.

23. (Item 5a) As of August 20, 2001, Respondent had left a 4" to 6" gap between the vinyl siding and the east wall bedroom window that extended completely around the window exposing the wood sheathing to the weather. This was a violation of Code Section 1403.3 and poor workmanship.

24. (Item 6) As of August 20, 2001, on the wood blocks on which the house address was attached, Respondent had improperly installed the trim channels (holding the siding), so they were not weather tight. This was a violation of Code Section 1403.3 and poor workmanship.

25. (Item 7) As of August 20, 2001, for the receptacle on the east wall, Respondent had cut the siding to fit around the receptacle without the use of trim pieces necessary to create a weather-tight seal. This was a violation of Code Section 1403.3 and poor workmanship.

26. (Item 10) As of August 20, 2001, Respondent had failed to remove the construction debris from the site. This was poor workmanship. Subsequently, this material was removed from the site without the work or expense of the homeowner.

27. (Item 11) As of August 20, 2001, the screen in the east wall dining room window was torn. Petitioner has not established that this was the fault of Respondent.

28. (Item 12) As of August 20, 2001, Respondent had failed to properly seal the siding weather tight around the gas line penetrations. There were large gaps between the pipe and siding. This was a violation of Code Section 1403.3 and poor workmanship.

Interior Complaints - Kitchen

29. (Item 1) As of August 20, 2001, around the north kitchen door, contrary to his agreement, Respondent had failed to install drywall (leaving the insulation exposed), or put sheathing on the floor in front of the door. This was a violation of Code Section 803.

30. (Item 3) As of August 20, 2001, in the kitchen, the corner counter top had a large gap between the sections, and a large gap in the back splash. The gaps were caused by improperly cutting the sections, not by movement in the house. This was poor workmanship.

31. (Item 4) As of August 20, 2001, Respondent had not finished the drywall covering the old doorway in the northeast corner of the kitchen, because the joint compound had not been sanded. This was poor workmanship.

32. (Item 5) As of August 20, 2001, in reference to the corner molding and baseboard, Respondent had left broken and damaged pieces, loose pieces, and missing pieces. This was poor workmanship.

33. (Item 6) As of August 20, 2001, Respondent had left the plumbing penetrations under the sink and next to the washing machine not properly sealed. The penetrations were up to 2 inches larger than the pipes and sometimes jagged. This was poor workmanship.

34. (Item 8) As of August 20, 2001, two upper cabinets had broken nails, they were not level with the remaining cabinets, and one was twisted out of shape. Petitioner has not established that this was due to poor workmanship by Respondent. The foundation under

the kitchen has been sinking and moving and could have caused some damage to the cabinets.

35. (Item 9) As of August 20, 2001, Respondent had installed the wall board between the upper cabinets so that it was poorly fitted in the corner under the corner cabinet. There was a gap between the pieces at the corner. This was poor workmanship.

36. (Item 10) As of August 20, 2001, there was a seam in the subfloor that was visible through the vinyl flooring. Petitioner has not established this was due to Respondent's poor workmanship because of a failure to properly level the subfloor. The foundation under the kitchen has been sinking and moving and could have caused the seam.

37. (Item 11) As of August 20, 2001, Respondent had not installed a vapor barrier over the ground surface in the crawlspace under the kitchen. The inspector indicated this could violate Code Section 1210.2. Respondent testified the crawlspace has one square foot of ventilation. The number of square feet in the foundation space is not indicated on record.

Interior – Bathroom (Second Floor)

38. (Item 1) As of August 20, 2001, Respondent had not finished dry walling around the window he had replaced. This is poor workmanship.

39. (Item 2) As of August 20, 2001, Respondent had properly secured to the wall, or prepared for painting, the new wood trim around the window he replaced. This is poor workmanship.

Restitution

40. The reasonable costs for restitution based on Petitioners Exhibit 4 and Respondent Exhibit G) are as follows:

- a. Exterior Complaints: Item 2, \$200; Items 5a, 5b and 5c, \$1,250; Item 6, \$32; Item 7, \$24; 12, not shown on record
- b. Interior Complaints, Kitchen: Item 6, \$16; other items, not proven (Petitioner's Exhibit 4 is over-inclusive)
- c. Interior Complaints, Bathroom (Second Floor): not proven (Petitioner's Exhibit 4 is over-inclusive because it includes painting)
- d. Total of \$1,522.00

Repair of Burst Kitchen Pipes

41. In January of 2001, the homeowner paid \$302 to repair water pipes that had frozen and burst. Petitioner has not established that the pipes burst due to any error on Respondent's part. The Inspection Report, Petitioner's Exhibit 2, lists no violation that clearly could have lead to this problem.

CONCLUSIONS OF LAW

A. Workmanship Violations (Paragraph 5, Formal Complaint)

1. Introduction

Petitioner accused Respondent of violating the following:

(2) A licensee or applicant who commits one or more of the following shall be subject to the penalties set forth in article 6:...

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

339.2411(2)(m)

The report referred to below is the Building Inspection Report, Petitioner's Exhibit 2.

2. Flashing

As to exterior complaints, Items 1a and 2, the weight of evidence establishes the Respondent did not install the flashing correctly and this was poor workmanship.

3. Siding

In each of the following items, Respondent's installation of the siding was poor workmanship because the siding was not sufficiently weather resistant: Exterior Complaints, Items 2, 4, 5c, 6, 7 (first receptacle) and 12.

4. French Doors

As to the Report, Exterior Complaints, Item 5a, concerning the trim and threshold around the French doors, the weight of evidence shows this is poor workmanship. The trim and threshold had no weather protection. The trim was constructed using many poorly fitting pieces.

5. Construction Debris

As to the Report, Exterior Complaints, Item 10, concerning the debris, the weight of evidence shows this is poor workmanship.

6. Kitchen Counter Top

As to the Report, Interior Complaints – Kitchen, Item 3, the weight of evidence shows that gaps were caused by Respondent's improperly cutting the sections, and therefore they are poor workmanship.

7. Drywall Covering Doorway

As to the Report, Interior Complaints – Kitchen, Item 4, Respondent's work was poor workmanship because he failed to sand the joint compound on the drywall covering the old doorway.

8. Corner Molding and Baseboard

As to the Report, Interior Complaints – Kitchen, Item 5, because of the broken, loose and missing pieces of molding and baseboard, Respondent's work was poor workmanship.

9. Plumbing Penetrations

As to the Report, Interior Complaints – Kitchen, Item 6, because of the unsealed openings, this was poor workmanship.

10. Wall Board Between Cabinets

As to the Report, Interior Complaints, Kitchen, Item 9, because of the poor installation of the wall board, this was poor workmanship.

11. Bathroom Window

In the Report, Interior Complaints, Bathroom (Second Floor), Items 1 and 2 Respondent is accused of poor workmanship. The evidence supports this claim. Respondent replaced the window, but then failed to finish dry walling around the window, properly secure the trim or prepare the trim for painting.

B. Code Violation (Paragraph 6, Formal Complaint)

1. Introduction

Petitioner accused Respondent of violating the following:

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. 1979 AC, R 338.1551(5).

The Building Code that applies here is the 1996 BOCA. The Report referred to below is the Building Inspection Report, Petitioner's Exhibit 2.

2. Flashing

As to the Exterior Complaints, Item 1a of the Report, the evidence shows a violation. Code Section 1508.1 requires flashings be installed at wall and roof intersections. Since Respondent installed the flashing incorrectly, he violated this.

As to the Exterior Complaints, Item 2 of the Report, the evidence shows a violation. Code Section 1405.3.10 requires that appropriate flashings be installed at wall and roof intersections, but Respondent failed to do so.

3. Siding

Code Section 1403.3 requires that exterior walls be faced with a weather resistant covering that is properly attached to resist wind and rain. Violations are shown in the Report, Exterior Complaints, Items 2, 4, 5c, 6, 7 (first receptacle) and 12. In each of these items the siding Respondent put on the exterior was not sufficiently weather resistant.

4. French Doors

Code Section 1403.3 requires that exterior walls be faced with a weather resistant covering that is properly attached to resist wind and rain. A violation is shown by the Report, Exterior Complaints, Item 5a, in reference to the trim and threshold.

5. Area Around North Kitchen Door

Code Section 803 requires the installation of interior finish and trim. A violation is shown by the Report, Interior Complaints – Kitchen, Item 1. Respondent failed to install drywall around the door, and failed to put sheathing on the floor in front of the door.

6. Vapor Barrier in Crawl Space

Code Sections 1210.2 and 1210.2.1 basically require a certain amount of ventilation in crawl spaces, depending on the square feet of foundation space, and allow the amount of ventilation to be reduced if a vapor retarder is installed on the ground surface. In Report, Interior Complaints – Kitchen, Item 11, there is a claim that the lack of a vapor barrier violates this. Petitioner, however, has not proven a violation. While there is no vapor barrier, it is unclear if one is needed. The amount of foundation space, and therefore the amount of ventilation needed are not shown on record. Respondent testified that there is one square foot of ventilation.

C. Failure to Correct (Paragraph 7, Formal Complaint)

Petitioner accused Respondent of violating the following rule:

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... 1979 AC, R 338.1551(4)

Petitioner has not established this alleged violation. The inspector issued his report on or about January 14, 2002, (Petitioner's Exhibit 2). By that time the relationship between the homeowner and Respondent had broken down, and the homeowner would not let

Respondent back on his property. Respondent was unable to correct the violations cited by the inspector.

D. Failure to Perform Contract (Paragraph 8, Formal Complaint)

1. Introduction

Petitioner accused Respondent of violating the following:

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 under-taken by the licensee...
MCL 339.2411(2)(a)

The Report referred to below is the Building Inspection Report, Petitioner's Exhibit 2.

The below examples of abandonment occurred before the homeowner barred Respondent from his property.

2. French Doors – Door Hardware and Screens (Report, Item 5a)

The weight of evidence indicates Respondent did agree to install the door hardware and screens. Had Respondent put this change of the contract into writing, as he was required to do, this factual issue would not have arisen.

Since Respondent failed to install the door hardware and screens, he "abandoned" that part of the agreement and violated the provision.

3. Other Doors and Windows

In reference to Report, Exterior Complaints, Item 5b, Respondent “abandoned” his agreement by failing to install the east wall storm door and east wall bedroom window screen. The weight of evidence indicates claimant agreed to install the storm door. (Again, Respondent failed to put the change in reference to the door into writing.)

4. Other Examples of Abandonment

Actually, many of the proven violations of the Code and workmanship standard, found in the Report, are also examples of abandonment in violation of the statute. However, to review them again here is unnecessary, and serves no discernible purpose.

At hearing, the homeowner claimed several examples of abandonment, which were not commented on by the inspector in his Report or admitted to by Respondent at hearing (e.g. lack of fire safety windows). I hold these unproven.

E. Changes Reduced to Writing (Paragraph 9, Formal Complaint)

Petitioner accused Respondent of violating the following rule:

Changes in the agreement shall be in writing, dated and initialed by the parties to be bound. 1979 AC, R 338.1533(3)

Evidence on record establishes Respondent violated this rule several times.

Two of the changes involved significant amounts of money: the homeowner’s agreement to do the painting and staining himself, and the hiring of another person to do the plumbing. The other significant changes proven on record were the replacement of the kitchen floor with wood, not concrete, and the replacement of the front and rear doors.

Respondent denied knowledge of any responsibility to create such a writing. As a licensed builder, however, he is obligated to know the rules.

F. Rule of Conduct (Paragraph 10, Formal Complaint)

Petitioner accused Respondent of the following:

A person who...commits one or more of the following shall be subject to the penalties prescribed in section 602:...

(c) Violates a rule of conduct of an occupation... MCL
339.604(c)

Petitioner has established this alleged violation. As noted above, Respondent violated several rules of conduct.

G. Penalty

A person who violates a section of the Occupational Code, or rule promulgated under the Code, shall be assessed one or more of the following relevant penalties: Limitation on license, suspension of license, revocation of license, civil fine not to exceed \$10,000, censure, probation, and a requirement to restriction. MCL 339.602

This record shows a large number and variety of violations. There is some mitigating evidence, because Respondent did acknowledge and offer to correct a few violations in his answer (Respondent's Exhibit F) to the Inspection Report (Petitioner's Exhibit 2). I believe Respondent should be fined \$9,000, have his license suspended for three months, and pay the amount of restitution proven at hearing (\$1,522).

DECISION AND RECOMMENDED PENALTY

Based on the above Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge decides as follows:

1. Respondent committed poor workmanship contrary to MCL 339.2411(2)(m).
2. Respondent's construction was not in accordance with the building code, contrary to R 338.1551(5).
3. Petitioner has not established that Respondent failed to correct a complaint justified by a local building inspector, contrary to R 338.1551(4).
4. Respondent abandoned his contract without legal excuse, contrary to MCL 339.2411(2)(a).
5. Respondent failed to reduce changes in the agreement to a sufficient writing, contrary to R 338.1533(3).
6. Respondent violated a rule of conduct of an occupation, contrary to MCL 339.604(c).

The undersigned Administrative Law Judge recommends the following penalties:

1. \$9,000 fine.
2. Restitution of \$1,522.00

3. License suspension for three months. If the fine and restitution are not paid by the end of the three months, the suspension should continue until they are paid.

C. David Jones
Administrative Law Judge