

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

In the matter of:

VILNIUS ENTERPRISES, INC.
BRUCE BURBA
QUALIFYING OFFICER
License No. 21-02-124689 (Lapsed)

Docket No. 2003-388
Complaint No. 9519
Former Complaint No. 21-01-2416-00

OTHER LICENSE:
BRUCE P. BURBA
License No. 21-01-088647 (Lapsed)

_____/

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 Erick Williams, Administrative Law Judge, dated July 7, 2003,

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Vilnius Enterprises, Inc., Bruce Burba, Qualifying Officer, Licensed Residential Builder, License No. 21-02-124689 (Lapsed), hereafter "Respondent", having been found in violation of Sections 604(g); 2411(2)(m) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(g); MCL 339.2411(2)(m), and Rule 51(4) of the State Board of Residential Builders and Maintenance & Alteration Contractors General Rules, *promulgated hereunder*, being 1979 AC, R 338.1551(4); 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 Two Thousand Five Hundred Dollars and 00/100 Cents (\$2,500.00), said fine to be paid to the Department of Consumer & Industry Services within sixty (60) days from the mailing date of this Final Order. Said fine shall be paid by cashier's check or money order, with Complaint No. 9519 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 shall make RESTITUTION to Martin Boote in the amount of Six Thousand Five Hundred Dollars and 00/100 Cents (\$6,500.00) paid by certified check made payable to Martin Boote, and mailed to 9576 Meadowcrest, Manchester, MI 48158. Restitution shall be paid 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 will result in suspension of any and all licenses held by Respondent, including Vilnius Enterprises, Inc., Bruce Burba, Qualifying Officer, License No. 21-02-124689 (Lapsed); Bruce P. Burba, License No. 21-01-088647 (Lapsed), MCL 339.2405(3). No application for licensure, relicensure or reinstatement shall be considered by the Department until fine and restitution are paid-in-full.
4. 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 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 Consumer & Industry Services, 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.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this 16th day of September 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 Vilnius Enterprises, Inc., Bruce Burba, Q.O., Licensed Residential Builder, Complaint No. 9519, before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, consisting of two (2) pages, this page included.

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

In the matter of

**Bureau of Commercial Services,
Petitioner**

v

**Vilnius Enterprises,
Bruce P. Burba, QO,
Respondent**

Docket No. 2003-388

Agency No. 9519

Agency: Bureau of Commercial Services

Case type: Sanction

**Issued and entered
this 7th day of July, 2003
by Erick Williams
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

The Bureau of Commercial Services issued a complaint against Vilnius Enterprises on 26 August 2002 under the Occupational Code, MCL 339.101 *et seq.* Hearings convened on 12 May 2003 and 17 June 2003 under the Administrative Procedures Act, MCL 24.201 *et seq.* Ronald Richards represented the Bureau of Commercial Services. Bruce Burba represented Vilnius Enterprises.

This opinion finds the complaint substantiated and recommends \$6,500 restitution to the homeowner, Martin Boote.

ISSUES AND APPLICABLE LAW

MCL 339.604(c) and (g) read:

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.... (g) Commits an act, which demonstrates incompetence....

MCL 339.2411(2)(m) reads:

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.

1979 AC R 338.1551(4) and (5) read:

(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.

1996 BOCA 1507.4.3 reads in part:

Double-layer underlayment shall be required on roof slopes below four units vertical in 12 units horizontal (4:12). Single-layer underlayment is required on all other roof slopes.

MCL 339.602 reads:

A person, school, or institution which violates a section of this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) A civil fine to be paid to the department, not to exceed \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made.

FINDINGS OF FACT

Martin Boote bought a new house from Vilnius Enterprises, Inc., in 1999 for \$177,500. Mr. Boote took occupancy in March 2000. There were some construction problems. This case concerns problems in the basement and on the roof. Basement walls were damp, the basement floor was cracked, and shingles blew off the roof in 2000, 2001, and 2002. Before Mr. Boote took occupancy, a couple of framers from a nearby Vilnius house had replaced some blown-off shingles. No other houses in the area lost shingles during windstorms.

Mr. Boote's house is in Manchester Township. In 2001, he arranged for a building inspection. Dale Behnke, a Manchester Township building inspector, inspected Mr. Boote's house four times. Mr. Behnke has been a building inspector for seven years. He has been in the construction industry for 25 years, including two years in which he did nothing but

roofing. Four written inspection reports by Dale Behnke were placed in evidence, and Mr. Behnke testified at both sessions of the hearing.

During this litigation, Mr. Boote and Mr. Burba agreed to hire Kenneth LaBelle, of Diversified Inspection Services, to inspect the roof. Mr. LaBelle's inspection report (Exhibit 5) is in the record, but Mr. LaBelle did not testify. Although the parties had agreed to split the cost of the LaBelle inspection, Mr. Burba did not pay his share.

Mr. Boote also hired John Shores to inspect the roof. Mr. Shores report (Exhibit 7) is in evidence, but he did not testify.

Altogether, the various inspection reports include:

- Exhibit 1, Behnke, April 2001
- Exhibit 2, Behnke, May 2002
- Exhibit 3, Behnke, July 2002
- Exhibit 4, Behnke, August 2002
- Exhibit 5, LaBelle, September 2001
- Exhibit 7, Shores, August 2001

Starter Shingle

In his April 2001 inspection, Mr. Behnke found that a two-foot wide area of the roof did not have a starter shingle under the first course; however there was no break in the shingle to allow water through to the roof. Mr. Behnke calls this poor workmanship. Exhibit 1 Behnke letter 19 April 2001.

Mr. Shores inspected the roof in August 2001 and noted that the starter strip was missing from the left side of the living room window gable. Exhibit 7, Shores letter, 22 August 2001.

Mr. LaBelle inspected the roof in September 2001 and noted that the shingle manufacturer required the starter row to be a half-cut shingle or a special starter strip. Instead,

Vilnius had installed full shingle pieces along the starter row, and they were upside down.

Exhibit 5, LaBelle, Diversified Professional Services inspection report 14 September 2001.

A year later, in April 2002, a Vilnius subcontractor made some repairs on the roof.

In his May 2002 inspection of the roof, Mr. Behnke noted that the starter shingle had been installed to his satisfaction. Exhibit 2 Behnke letter 29 May 2002.

In July 2002, Mr. Behnke re-inspected the house and noticed that another shingle had blown off the roof. He decided to make arrangements to climb onto the roof and inspect it more closely. He issued a report of his closer inspection in August 2002. During that inspection he found that the repair to the starter shingle had resulted in a tearing of a portion of the shingle. Exhibit 4, Behnke letter, 8 August 2002.

Mr. Burba recalls that he got a copy of Mr. Behnke's August 2002 report (Exhibit 4), but he mislaid it, and he took no action to correct the problem.

Valley Shingles

During his April 2001 inspection, Mr. Behnke found that the roof valleys were improperly shingled. The corners of the shingles adjoining the valley were not properly cut. Mr. Behnke found that to be poor workmanship. Exhibit 1 Behnke letter 19 April 2001. The manufacturer's instructions read in part:

Snap two chalk lines the full length of the valley ... When the shingles are being applied, lay them over the valley flashing, trim the ends to the chalk line, and cut a 2" triangle off the corner to direct water into the valley. Embed the valley end of each shingle into a 3" band of asphalt plastic cement ... Exhibit 4

A year later, in April 2002, a Vilnius subcontractor made some repairs based on Mr. Behnke's April 2001 letter.

In his May 2002 inspection, Mr. Behnke found that the valleys were glued down to his satisfaction. Exhibit 2 Behnke letter 29 May 2002.

In July 2002, Mr. Behnke was at the cite and noticed that another shingle had blown off the roof. He decided to make arrangements to climb onto the roof and inspect it more closely. He issued a report of his closer inspection in August 2002. During that inspection he found that the corners of the valley shingles were not properly cut as per the manufacturer's instructions. Exhibit 4, Behnke letter, 8 August 2002.

Mr. Burba recalls that he received Mr. Behnke's August 2002 letter (Exhibit 4), but he mislaid it and did not do anything to fix the problem. Mr. Burba admits the allegations are true, and that valley shingles were improperly installed.

Shingle Exposure

In August 2001, Mr. Shores found that the shingles were improperly exposed. While the manufacturer requires each shingle to have a 5.375" exposure, the shingle exposure on the Boote roof exceeded 6.125" on approximately 25% of the roof, with 6.5" being common. Exhibit 7, Shores letter, 22 August 2001.

In September 2001, Mr. LaBelle found that shingle exposure averaged 6.1". Exhibit 5, Diversified Professional Services inspection report 14 September 2001.

In August 2002, Mr. Behnke's inspection found several courses of shingles with more than the recommended exposure, up to 1/4". Other shingles had less than 4" exposure. Mr. Behnke also found that shingles were not all butted end-to-end but some laid over the top of the next shingle. "This keeps the glue tabs from sealing at that point," he wrote. Exhibit 4, Behnke letter, 8 August 2002.

Mr. Burba recalls that he got Mr. Behnke's report, but he mislaid it, and did nothing to correct it. Mr. Burba admits the allegations are true.

Ridge

In April 2001, Mr. Behnke found that the ends of the ridge vents were not sealed to prevent water-snow leakage -- poor workmanship. Exhibit 1 Behnke letter 19 April 2001

A year later, in April 2002, a Vilnius subcontractor made some repairs on the roof, a one-hour job.

In May 2002, Mr. Behnke noted that the ends were sealed satisfactorily. Exhibit 2 Behnke letter 29 May 2002.

In his August 2002 inspection, during which he climbed the roof and examined it more closely, Mr. Behnke noted that the sealing had been done with the wrong material, latex caulk instead of tar. Exhibit 4, Behnke letter, 8 August 2002.

The manufacturer's instructions require asphalt plastic cement. Exhibit A.

Mr. Burba got of copy of Mr. Behnke's August 2002 report, but he mislaid it and made no corrections.

Felt Underlayment

Mr. Behnke's April 2001 inspection found that felt was missing in some places. He estimated that there was no underlayment within 4' of the peak and on a west side dormer, a violation of 1996 BOCA 1507.4.3. Exhibit 1 Behnke letter 19 April 2001.

In August 2001, John Shores found that the felt underlayment had insufficient overlap. The manufacturer's instructions call for a 2" horizontal overlap and a 4" vertical overlap. Mr. Shores found a maximum 1" overlap, some areas without any overlap, and some areas missing felt altogether. Exhibit 7, Shores letter, 22 August 2001.

In September 2001, Kenneth LaBelle found about 1/3rd of the roof was missing underlayment. Exhibit 5, LaBelle, Diversified Professional Services inspection report 14 September 2001.

Several months later, in April 2002, a Vilnius subcontractor did an hour's work of repair work on the roof, but apparently did not add underlayment.

In May 2002, Mr. Behnke estimated that a one-foot strip along the length of the roof did not have felt. He found, nonetheless, that the roof violations were resolved to his satisfaction. Exhibit 2 Behnke letter 29 May 2002.

In August 2002, examining the roof more closely, Mr. Behnke found that felt was missing in a strip 18" tall on the top row of felt across the roof. Exhibit 4, Behnke letter, 8 August 2002.

Mr. Burba recalls that he got a copy of Mr. Behnke's August 2002 letter, but he mislaid it and took no action. He concedes that some felt was missing.

Nails

In April 2001, Mr. Behnke reported that some of the nails fastening the shingles to the roof were not flush with the shingle surface; they cut into it. Before Mr. Boote took occupancy, a couple of framers from a nearby Vilnius house had replaced some blown-off shingles. Mr. Behnke noted that the roof had been repaired using an improper type of nail – 8-penny nails instead of roofing nails. Mr. Behnke presumed that the improper nailing might have contributed to the loss of shingles during subsequent windstorms. Mr. Behnke found a violation of 1996 BOCA 1507.4.3 and poor workmanship. Exhibit 1 Behnke letter 19 April 2001. On this point, the manufacturer's instructions read:

Use galvanized zinc coated roofing nails ... long enough to penetrate through plywood or 0.75" into boards. Use four nails per shingle placed in nail line 7.375" below the top edge, 1" in from each end and equally spaced along the shingle's full length. Drive in straight so that nail head is flush with, but not cutting into shingle surface. Nailing on steep slopes/winter application/high wind areas ... use six nails per shingle ... Exhibit A, manufacturer's application instructions.

In September 2001, Mr. LaBelle estimated that 25% of the nails had over-penetrated the shingle membrane. There were an average of 3.5 nails per shingle. Half the nails were not the proper distance from the top edge of the shingle. Exhibit 5, LaBelle, Diversified Professional Services inspection report 14 September 2001.

In April 2002, a Vilnius contractor made additional repairs on the roof.

Mr. Behnke's August 2002 inspection found four nails per shingle on the shingles that he inspected, but nearly all the nails were out of place. Also, the nails on the ridge cap were too short, 1.25", allowing for only .25" penetration into the wood below. Several ridge cap shingles had blown off. Exhibit 4, Behnke letter, 8 August 2002.

Mr. Burba got a copy of Mr. Behnke's August 2002 letter, but he mislaid it and took no action; he admits that the nailing was improper.

Basement Floor

In April 2001, Mr. Behnke found a crack in the basement floor, 3/16" at the widest. He concluded that was poor workmanship. Exhibit 1 Behnke letter 19 April 2001.

Vilnius Enterprises fixed the crack in the basement floor in June 2002. When he inspected the house in August 2002, Mr. Behnke found that the crack in the floor was sealed with a flexible urethane caulk. The fix was acceptable. Exhibit 4, Behnke letter, 8 August 2002.

Basement Walls

In his April 2001 inspection, Mr. Behnke found that the basement walls were damp and there was evidence of water seepage. During construction, the north foundation wall had required repairs. The dampness was in the area affected by the repairs.

Mr. Behnke found a violation of 1996 BOCA 1813.3.2 and poor workmanship. Exhibit 1 Behnke letter 19 April 2001.

Vilnius Enterprises did nothing to repair the dampness in the basement walls. Mr. Boote ran gutter discharges farther away from the building and caulked the foundation walls above grade, and the dampness disappeared. Exhibit 2 Behnke letter 29 May 2002. Exhibit 4, Behnke letter, 8 August 2002.

Fixing the Roof

Although Mr. Burba concedes that there are problems with the roof, he argues that fixing the roof does not require an entirely new roof. He bases his argument on the recommendation of the shingle manufacturer, which reads as follows. In his 14 May 2003 letter, Paul Dunsbier of IKO Industries, the shingle manufacturer, writes:

I understand that IKO Cambridge 25 laminated fiberglass asphalt shingles were applied to a roof in August of 1999. This letter will confirm that these shingles are covered by a limited wind resistance warranty of 60 mph. In addition, you mentioned that shingles in certain areas of this roof have blown off. For those areas, it will be necessary to replace those shingles (remember to apply asphalt plastic cement to all adjacent shingles that will have to be pried apart to insert the new shingles). Also, if it is deemed necessary to add additional nails (i.e., for increased wind resistance), they should be located as per our application instructions. Additional nails will improve the shingles' ability to withstand sustained wind occurrences and will not affect the asphalt shingle limited warranty.
Exhibit V

Mr. Behnke recalls that he talked to Mr. Dunsbier, the manufacturer's representative, who told him it was possible to pull up some shingles, replace the felt, nail the shingles back down and tar them. He disagrees. In Mr. Behnke's view, there would be so many shingles involved that the whole roof must be redone. That sort of repair would do more damage to the roof than if nothing were done at all. The only reasonable way to fix the problems is to put an entirely new roof on the house. That means tearing off the current roof. While it might be possible to install a new roof on top of the existing roof, it will look lumpy, and most roofers won't put a new roof on top of an old roof.

Mr. Boote obtained an estimate for a new roof from RD Kleinschmidt, Inc., a roofing company in Manchester. The total price, \$7,195, is not itemized, and it does not include replacement of damaged wood underneath the shingles.

Mr. Burba submitted no estimate for replacing the roof. He argued that a new roof would cost closer \$4,730.

Mr. Behnke conceded that the \$7000 Kleinschmidt estimate is a little high. He agreed with Mr. Burba that Mr. Boote could probably find someone to re-roof the house for \$4,730.

Incompetence

Shingles blew off Mr. Boote's roof during windstorms in 2000, 2001 and 2002. No other houses in the area lost shingles in those windstorms. Before Mr. Boote took occupancy, Vilnius Enterprises had already attempted repairs on the roof.

Mr. Behnke inspected Mr. Boote's roof four times and wrote four reports, citing essentially the same problems. Mr. Boote hired two other inspectors at his own expense. They found essentially the same problems.

After receiving Mr. Behnke's April 2001 inspection report, Vilnius Enterprises made no repairs until April 2002.

Mr. Behnke's August 2002 inspection report cited essentially the same problems with the roof as had been cited in April 2001. After receiving Mr. Behnke's August 2002 report, Vilnius Enterprises took no action to correct the problems with the roof cited in that report.

The persistent, uncorrected problems with the roof demonstrate that the roof work on the Boote house was incompetent. Vilnius Enterprises violated MCL 339.604(g).

CONCLUSIONS OF LAW

Starter shingle. The starter shingle was improperly installed, upside down and not cut, a violation of MCL 339.2411(2)(m).

Valleys. The valleys were improperly shingled. The corners of the shingles adjoining the valley were not properly cut as required by the manufacturer's instructions, a violation of MCL 339.2411(2)(m).

Shingle exposure. The shingles were improperly exposed and uneven, a violation of MCL 339.2411(2)(m).

Roof ridge. The ends of the ridge vents were left unsealed from 1999 to 2002. When Vilnius made the repair in 2002, it used the wrong material -- latex caulk instead of asphalt plastic cement -- a violation of MCL 339.2411(2)(m).

Felt underlayment. Felt underlayment was missing in some places, a violation of 1996 BOCA 1507.4.3.

Nails. Some of the shingle nails were not flush with the shingle surface, but had cut into it. When repairs were attempted, Vilnius did not use roofing nails, a violation of MCL 339.2411(2)(m). The problem was never repaired; the shingles are not properly secured to the roof, which is a structural hazard, a violation of 1979 AC R 338.1551(4).

Basement floor crack. The basement floor crack was repaired, albeit a year after Mr. Behnke's April 2001 inspection. No violation.

Basement walls. The owner corrected the dampness in the basement walls. Moot; no violation.

Incompetence. The persistent, uncorrected problems with the roof demonstrate that the roof work on the Boote house was incompetent. Vilnius Enterprises violated MCL 339.604(g).

PROPOSED SANCTIONS

Vilnius Enterprises violated MCL 339.604(g), MCL 339.2411(2)(m), 1979 AC R 338.1551(4), and 1996 BOCA 1507.4.3, and is subject to penalties under MCL 339.602.

Mr. Boote is entitled to restitution under MCL 339.602(h). Clearly, the current roof needs to be torn off. The underlayment is inadequate, nailing is inadequate, sealing is inadequate. Shingles have blown off, the house has experienced water damage, and the extent of the defects is not precisely known.

As Behnke testified, the Kleinschmidt \$7,195 estimate for a new roof is a little high. The Kleinschmidt estimate is not itemized and the estimator did not testify in person, which detracts from its credibility.

On the other hand, there is no equivalent estimate in evidence. Mr. Behnke's *ad hoc* testimony about the price of fixing the roof ("You could probably find someone to re-roof the house for \$4,730") is not a commercial-quality estimate and deserves even less weight than the Kleinschmidt proposal. In addition, there may be hidden water damage to the roof structure itself, which is not included in the Kleinschmidt estimate.

Were I to give more-or-less equivalent weight to the \$7,195 Kleinschmidt proposal and the \$4,370 Behnke quote by splitting the difference that would imply a restitution amount of about \$6,000. However, the Kleinschmidt proposal deserves relatively more weight, so I would award restitution in the amount of \$6,500.

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The Bureau of Commercial Services has also recommended a \$2,500 fine, pursuant to MCL 339.602(e).

Erick Williams
Administrative Law Judge