

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

In the matter of:

REPUBLIC WALL, INC.
REUBEN CARL TAYLOR
QUALIFYING OFFICER
License No. 21-04-125780 (Lapsed)

Docket No. 2003-728
Complaint No. 10153
Former Complaint No. 21-01-4896-00

OTHER LICENSE:
BIG DOG FOUNDATION COMPANY
REUBEN CARL TAYLOR
QUALIFYING OFFICER
License No. 21-04-118066 (Lapsed)

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on November 4, 2003;

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Stephen B. Goldstein, Administrative Law Judge, dated September 12, 2003;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Republic Wall, Inc., Reuben Carl Taylor, Qualifying Officer, Licensed Residential Builder, License No. 21-04-125780 (Lapsed), hereafter "Respondent", having been found in violation of Sections 604(b); 604(c); 2411(2)(a); 2411(2)(c); 2411(2)(l) of the Michigan Occupational Code, 1980 P.A. 299, as *amended*, hereafter the "Code", MCL 339.604(b); MCL 339.604(c); MCL 339.2411(2)(a); MCL 339.2411(2)(c); MCL 339.2411(2)(l) and Rule 51(2) of the State Board of Residential Builders and Maintenance & Alteration Contractors General Rules, *promulgated hereunder*, being 1979 AC, R 338.1551(2);

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 Seven Thousand Five Hundred Dollars and 00/100 Cents (\$7,500.00), a higher fine than recommended by the Administrative Judge, because of severity of the violations, particularly abandonment and fraud, deceit or deception in an occupation, said fine to be paid 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 cashier's check or money order, with Complaint No. 10153 clearly indicated on the check or money order, made payable to the State of Michigan and sent to the Department of Labor & Economic Growth, Bureau of Commercial Services, Enforcement Division, P.O. Box 30185, Lansing, Michigan 48909.
2. Respondent shall make RESTITUTION to Harry G. Lutz in the amount of Five Hundred Forty-Four Dollars and 06/100 Cents (\$544.06) by certified check made payable to Harry G. Lutz and mailed to 4201 Murphy Lake Road, Millington, MI 48746, within sixty (60) days from the mailing date of this Final Order.

3. Respondent Republic Wall, Inc., Reuben Carl Taylor, Qualifying Officer, Licensed Residential Builder, License No. 21-04-125780 (Lapsed), shall be and hereby is REVOKED, effective the mailing date of this Final Order. Any and all other Article 24 license(s) held by Respondent, including Big Dog Foundation Company, Reuben Carl Taylor, Qualifying Officer, Licensed Residential Builder, License No. 21-04-118066 (Lapsed), shall be and hereby are REVOKED, 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 Labor & Economic Growth, Bureau of Commercial Services, Audit Unit, P.O. Box 30018, Lansing, Michigan 48909, of compliance with each and every requirement of this Final Order, in a form acceptable to the Department.

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 4th day of November 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

This is the final page of a Final Order in the matter of Republic Wall, Inc., Ruben Carl Taylor, Q.O. , Licensed Residential Builder, Complaint No. 10153, before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, consisting of three (3) pages, this page included.

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

In the matter of:

**Bureau of Commercial Services,
Petitioner**

Docket No. 2003-728

Agency No. 10153

v

**Republic Wall, Inc.
Reuben Carl Q.O.,
Respondent**

Agency Name: Bureau of Commercial Services

Case Type: Sanction

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**Issued and entered
this 12th day of September, 2003
by Stephen B. Goldstein
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter was properly noticed for a hearing to commence at 9:00 A.M. on August 1, 2003 in the hearing rooms of the Michigan Department of Consumer and Industry Services, Bureau of Hearings, 2501 Woodlake Circle, 1st Floor, Okemos, Michigan.

Stephen B. Goldstein presided as Administrative Law Judge. Tracey Yarborough, Attorney at Law, appeared on behalf of the Bureau of Commercial Services (Petitioner). Neither Republic Wall, Inc., Reuben Carl Taylor, Q.O. (Respondent), nor an attorney on Respondent-s behalf appeared at the hearing.

This matter commenced with the filing by the Petitioner of a Formal Complaint dated February 11, 2003 (Complaint) alleging violations by Respondent of Michigan-s Occupational Code, 1980 PA 299, as amended (Code).

The Notice of Hearing dated June 11, 2003 scheduled this matter for a contested case hearing to commence on August 1, 2003. Furthermore, the Notice informed

the parties that if they failed to appear at the hearing as scheduled, a Default Judgment or decision may be entered pursuant to Section 78 of the Administrative Procedures Act of 1969, as amended (APA), being MCL 24.201, *et seq.*; MSA 3.560 (101), *et seq.*

At the outset of the contested case hearing on August 1, 2003, Ms. Yarborough requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the APA. In addition, she requested that a Default be granted on behalf of Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states in pertinent part as follows:

A(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:

A(2) Except as otherwise provided by law, disposition may be made of a contested case by default . . .@

The Judge determined that Petitioner should be allowed to proceed in Respondent's absence, and therefore granted Petitioner's motion for a Default Judgment.

ISSUES AND APPLICABLE LAW:

The general issue in this matter is whether Respondent violated the Code.

The specific issues are whether Respondent violated MCL 339.604(b) and (c); MCL 339.2411(2)(a), (c) and (l); and 1979 AC R 338.1551(2). Those Sections of the Code and Rule provide as follows:

ASec. 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:@

A * * * @

A(b) Practices fraud, deceit, or dishonesty in practicing an occupation.@

A(c) Violates a rule of conduct of an occupation.@

A * * * @

ASec. 2411. (1) * * * @

A(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.@

A * * * @

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

A * * * @

A(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.@

ARule 51. (1) * * * @

(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.

SUMMARY OF EXHIBITS

Petitioner Exhibit 1 - copy of invoice from Colosky & Sons Trucking & Excavating, in the amount of \$165.00, dated June 21, 2001, and attached receipts from Lowes and Home Depot.

Petitioner Exhibit 2 - copy of check, dated May 15, 2001, issued by GreenStone Farm Credit Services to Harry G. Lutz and Respondent in the amount of \$14,437.00. The reverse side of the check indicates it was endorsed by both Harry Lutz and Respondent, and that it was thereafter negotiated.

FINDINGS OF FACT

Respondent was properly served with the Notice of Hearing but did not appear at the time and place scheduled for the hearing. As a result, Respondent was found in default under Section 78(2) of the APA.

Based upon the granting of the Default Judgment, the following facts are found:

1. That, at all times relevant to this Complaint, Respondent was licensed as a residential builder under the Code.
2. That, in May, 2001, Respondent entered into a contract to perform services regulated by the Code with Harry G. Lutz.
3. That, on or about May 15, 2001, Harry G. Lutz paid to the Respondent the sum of \$14,437.00 for the services that were the subject of the contract between he and the Respondent.
4. That, on or about May 24, 2001, the Respondent paid Imlay City Concrete, Inc., the sum of \$5,186.31 by check.
5. That the check Respondent issued to Imlay City Concrete was returned for insufficient funds.

6. That Imlay City Concrete, Inc., gave notice to the Respondent that the check had been returned for insufficient funds.
7. That Respondent, by presenting, in the ordinary course of business, a check for which there were insufficient funds in the account and by failing to subsequently pay the amount due or make good on the check, engaged in conduct which is fraudulent, deceitful or dishonest within the meaning of Section 604(b) of the Code.
8. That Respondent failed to satisfy a lien filed by Homer Block Company-Imlay City Concrete, Inc. on July 16, 2001, on property located at 5634 Columbiaville Road, Marathon Township, Lapeer County, Michigan, contrary to Section 2411(2)(l) of the Code.
9. That Respondent has failed to pay money to subcontractors with whom Respondent has contracted with to perform services required by the contract, contrary to Section 2411(2)(c) of the Code.
10. That Respondent has failed to account for money belonging to Harry Lutz, contrary to Section 2411(2)(c) of the Code.
11. That Respondent has failed to respond to the complaint in a timely manner, contrary to Rule 51(2).
12. That Respondent has violated a rule of conduct in practicing his occupation, contrary to Section 604(c) of the Code.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings apply to administrative hearings.

8 Callaghan's Michigan Pleading and Practice, 2nd Ed, Section 60.48, p. 280. The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that Respondent violated the Code. American Way Service Corporation v Commissioner of Insurance, 113 Mich App 423 (1982). Under Section 72 of the APA, there is no requirement to provide a

hearing when all alleged facts are taken as true. Smith v Lansing School District, 428 Mich 248 (1987).

Having granted a Default Judgment on behalf of Petitioner, it is concluded the above acts establish that Respondent has violated MCL 339.604(b) and (c); MCL 339.2411(2)(a), (c) and (l); and 1979 AC R 338.1551(2). Accordingly, Petitioner has established, by a preponderance of the evidence, that Respondent has violated the above Sections of the Code and Rules as alleged in its complaint.

RECOMMENDED SANCTIONS

Based upon Respondent=s violations of the Code and Rules, it is recommended that Respondent be assessed the following sanctions:

1. Imposition of a Civil Fine in the amount of \$2,000.00.
2. Restitution to be paid to Harry Lutz in the amount of \$544.06.
3. Suspension of any and all licenses held by Respondent in either an individual or corporate capacity until all fines and restitution have been paid in full.

Stephen B. Goldstein
Administrative Law Judge