

**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,**

**Docket No. 2004-56
Complaint No. 87131**

Complainant,

v

MICHIGAN REAL ESTATE & CONSTRUCTION SERVICES, INC.

**SAM JEFFREY CHERRIN
QUALIFYING OFFICER
License No. 21-02-150239 (Lapsed)**

Respondent.

_____ /

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on November 9, 2004;

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of Dennis Matulewicz, Administrative Law Judge, dated May 28, 2004;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Michigan Real Estate & Construction Services, Inc., Sam Jeffrey Cherrin, Qualifying Officer, Licensed Residential Builder, License No. 21-02-150239 (Lapsed), hereafter "Respondent", having been found in violation of Sections 2411(2)(c); 2411(3) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.2411(2)(c); MCL 339.2411(3);

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 Five Thousand Dollars and 00/100 Cents (\$5,000.00) 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 cashier's check or money order, with Complaint No. 87131 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.O. Box 30185, Lansing, Michigan 48909.**
- 2. Respondent shall make RESTITUTION to the Department of Labor & Economic Growth, Homeowner Construction Lien Recovery Fund, in the amount of Ten Thousand Dollars and 00/100 Cents (\$10,000.00), plus litigation cost, fees, and interest at the statutory rate, effective from December 9, 2002, the date of payment from the fund, pursuant to the attached Statutory Interest Schedule, which accompanies this Final Order. Restitution shall be paid by certified check made payable to the Department of Labor & Economic Growth, Homeowner Construction Lien Recovery Fund, and mailed to P. O. Box 30018, Lansing, MI 48909, within sixty (60) days from the mailing date of this Final Order.**
- 3. Respondent Michigan Real Estate & Construction Services, Inc., Sam Jeffrey Cherrin, Qualifying Officer, Licensed Residential Builder, License No. 21- 02-150239 (Lapsed), and any and all other Article 24 licenses held by Respondent, if any, shall be and hereby are IMMEDIATELY REVOKED, effective the mailing date of this Final Order, including license(s) issued to a corporate entity in which the Respondent serves as qualifying officer and individual license(s) held by Respondent. No application for licensure, relicensure 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, Office of Administrative Services, 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 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.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this ____ day of _____, 2005.

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
Office Of Administrative Services
P.O. Box 30018
Lansing, MI 48909**

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

In the matter of

Docket No. 2004-56

Bureau of Commercial Services,
Petitioner

Agency No. 87131

v

Agency: Bureau of Commercial
Services

Michigan Real Estate & Construction
Services, Inc.

Sam Jeffrey Cherrin, Q.O.,
Respondent

Case Type: Sanction

/

**Issued and entered
this 28th day of May 2004
by Dennis Matulewicz
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tiffany Daugherty, Petitioner's Representative, appeared on behalf of Petitioner, Bureau of Commercial Services. Attorney Abraham Singer appeared with his client, Respondent, Sam Jeffrey Cherrin, and consented to a default judgment on the record.

This matter commenced with the issuance of a Notice of Hearing dated January 16, 2004, scheduling a contested case hearing for March 1, 2004. An Order for Continuation was issued March 17, 2004 rescheduling the contested case hearing for May 13, 2004. The Notice of Hearing was mailed to Respondent's last known address.

The Notice of Hearing was issued pursuant to allegations by Petitioner that Respondent violated the Occupational Code, 1980 PA 299, as amended (Code), being MCL 339.101, *et seq.* and the administrative rules promulgated thereunder, 1979 AC, R 338.1511 *et seq.*

The hearing in this matter commenced as scheduled on May 13, 2004. At the hearing, Petitioner's representative requested that Petitioner be allowed to proceed in Respondent's absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended (APA), being MCL 24.272, and that a default be granted on behalf of Petitioner pursuant to Section 78 of the APA, being MCL 24.278.

Section 72 of the APA provides 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 [MCL 24.272(1)].

Further, Section 78 of the APA provides, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties [MCL 24.278(2)].

Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in Petitioner's Formal Complaint were deemed as proven.

The following exhibits were admitted into the record at Petitioner's request were:

Petitioner's Exhibit 1	Consent Judgment in Favor of Erb Lumber Against Homeowner Construction Lien Recovery Fund State of Michigan in the Circuit Court for the County of Macomb dated October 1, 2002.
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Petitioner's Exhibit 2

State of Michigan Remittance Advice to Carolina Holdings Midwest, L.L.C., d/b/a Erb Lumber dated December 9, 2002.

No other evidence was offered into the record. No witnesses testified at the hearing; however, Abraham Singer, Respondent's Attorney, stated on the record that Respondent consented to the default judgment.

ISSUES AND APPLICABLE LAW

The specific issues in this case are whether Respondent violated Sections 2411(2)(c) & (3) of the Code, being MCL 339.2411(2)(c) & (3).

FINDINGS OF FACT

Based on the record, the following findings of fact are established:

1. Michigan Real Estate & Construction Services, Inc., Sam Jeffrey Cherrin, Qualifying Officer, has at all times relevant to this matter been licensed as a residential builder under the Code, or was seeking renewal of such license, except for those events that occurred after May 31, 2002 at which time the license lapsed.
2. That on the ninth day of December, 2002, as a result of Respondent's failure to pay one or more lien claimants, payment was made by the Homeowner Construction Lien Recovery Fund in the amount of \$10,000.000 to Carolina Holdings Midwest L.L.C. conducting business as Erb Lumber, an assumed name.
3. That the facts underlying said payment arose out of and in connection with the performance of Respondent's duties as a licensed residential builder and/or residential maintenance and alternation contractor.
4. Respondent failed to remit money, which belonged to Paul T. Barczewski and Jennifer L. Barczewski to Carolina Holdings Midwest L.L.C. conducting business as Erb Lumber, an assumed name, contrary to the Code.
5. Respondent failed to account for money, which belonged to Paul T. Barczewski and Jennifer L. Barczewski, contrary to the Code.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's, Michigan Pleading and Practice, (2d ed.) § 60.48, p. 230. The burden of proof is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent 1990 MR, R 339.1763. 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, Petitioner has proven, by a preponderance of the evidence, that Respondent violated the following Sections of the Code and/or Rules.

1. Respondent failed to account for or remit money coming into the person's possession which belongs to Paul T. Barczewski and Jennifer L. Barczewski [MCL 339.2411(2)(c)].
2. Respondent's failure to pay liens resulted in a payment being made from the homeowner construction lien recovery [MCL 339.2411(3)].

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following recommendations to the Board:

1. Payment of restitution to Homeowner Construction Lien Recovery Fund, in the amount of \$10,000.00
2. Payment of a civil fine to be determined by the Board.
3. In the event the civil fine and restitution have not been paid within 60 days following the issuance of the Board's final order, then all licenses or registrations under the jurisdiction of the Code should be suspended and no new or renewal licenses or registrations should be issued until the civil fine and restitution have been paid.

Dennis Matulewicz
Administrative Law Judge