

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF RESIDENTIAL BUILDERS AND MAINTENANCE AND
ALTERATION CONTRACTORS

In the Matter of

ARTHUR WILLIAM LUSTER
License No. 21-01-101683

Complaint No. 21-17-331665

CONSENT ORDER AND STIPULATION

CONSENT ORDER

A formal complaint was filed on September 5, 2017 charging Arthur William Luster (Respondent) with having violated sections 601(1), 604(c) and (h), 2404a, and 2411(2)(a) and (e) of the Occupational Code, MCL 339.101 *et seq.*, and Mich Admin Code, R 338.1551(2).

The parties have stipulated that the Board may enter this consent order and that the facts alleged in the Formal Complaint are true and constitute violations of sections 601(1), 604(c) and (h), 2404a, and 2411(2)(a) and (e) of the Occupational Code and Mich Admin Code, R 338.1551(2). The Board has reviewed the stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding complaint.

Accordingly, for these violations, IT IS ORDERED:

Respondent is FINED \$2,000 to be paid by check, money order, or cashier's check made payable to the State of Michigan (with complaint number 21-17-331665 clearly indicated on the check or money order), and shall be payable within 60 days. The timely payment of the fine shall be Respondent's responsibility. Respondent

shall mail the fine to: Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, Michigan 48909. Respondent is jointly and severally liable for payment of the fine with Showplace Builders Inc. (complaint number 21-17-221664).

Within 90 days of the effective date of this order, Respondent shall pay RESTITUTION in the amount of \$23,984.27 to Joel [redacted] and Barbara [redacted]. If Respondent fails to timely pay this restitution, his license shall be suspended until he submits satisfactory written proof of restitution payment to the Department. Respondent shall mail restitution to such individuals at the address provided to Respondent in a separate document by the Department or Office of Attorney General, Licensing and Regulation Division at the time he signed this stipulation. Respondent is jointly and severally liable for payment of the restitution with Showplace Builders Inc. (complaint number 21-17-221664).

Respondent shall submit satisfactory written proof of timely restitution payment to the Department by mail, or other method acceptable to the Department.

Respondent shall direct any communications to the Department that are required by the terms of this order to: Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Enforcement Division – Compliance Section, P.O. Box 30670, Lansing, Michigan 48909.

Respondent shall be responsible for all costs and expenses incurred in complying with the terms and conditions of this consent order.

Respondent shall be responsible for the timely compliance with the terms of this consent order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this order.

If Respondent violates any term or condition set forth in this order, Respondent will be in violation of section 604(k) of the Occupational Code.

This order shall be effective thirty days from the date signed by the Chairperson or the Chairperson's designee, as set forth below.

Signed on MAY 15, 2018

MICHIGAN BOARD OF RESIDENTIAL
BUILDERS AND MAINTENANCE AND
ALTERATION CONTRACTORS

By [Signature]
Chairperson, Sidney Browne

Article

STIPULATION

The parties stipulate as follows:

1. The facts alleged in the complaint are true and constitute a violation of the Occupational Code.
2. The Director of the Bureau of Professional Licensing, or her designee, must approve this consent order and stipulation before it is submitted to the Board for final approval.
3. Respondent understands and intends that, by signing this stipulation, he is waiving the right under the Occupational Code, rules promulgated under the Occupational Code, and the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, to require the Department to prove the charges set forth in the complaint by

presentation of evidence and legal authority, and to present a defense to the charges. Should the Board reject the proposed consent order, the parties reserve the right to proceed to hearing.

4. This matter is a public record required to be published and made available to the public pursuant to section 11(1)(a) of the Michigan Freedom of Information Act, MCL 15.231 *et seq.*

5. The Board may enter the above Consent Order, supported by Board conferee William Adcock. Mr. Adcock or an attorney from the Licensing and Regulation Division may discuss this matter with the Board in order to recommend acceptance of this resolution.

6. Mr. Adcock and the parties considered the following factors in reaching this agreement:

- A. Respondent's license is currently active.
- B. Respondent provided evidence of purchasing materials for the project, which was taken into account in determining the restitution.
- C. Respondent does not have any prior disciplinary action against his residential builder license.
- D. Respondent desires to resolve this case without expending time and resources on an administrative hearing.

By signing this stipulation, the parties confirm that they have read, understand, and agree with the terms of the consent order.

AGREED TO BY:

AGREED TO BY:

M. Catherine Waskiewicz
M. Catherine Waskiewicz (P73340)
Assistant Attorney General
Attorney for Complainant
Dated: 3-9-18

Arthur William Luster
Arthur William Luster
Respondent
Dated: 3-8-18

Bureau of Professional Licensing
Approved by:

Cheryl Wykoff/Pezon
Cheryl Wykoff/Pezon, Acting Director

4/19/18
Date

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF RESIDENTIAL BUILDERS AND MAINTENANCE AND
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In the Matter of

ARTHUR WILLIAM LUSTER
License No. 21-01-101683

Complaint No. 21-17-331665

FORMAL COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General M. Catherine Waskiewicz, on behalf of Complainant Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, files this Formal Complaint against Respondent Arthur William Luster, alleging upon information and belief as follows:

1. The Board of Residential Builders and Maintenance and Alteration Contractors is an administrative agency established under Article 24 of the Occupational Code, MCL 339.101 *et seq.*
2. Respondent's residential builder license expired on May 31, 2016 and was not renewed until September 15, 2016.
3. At all times relevant to this Complaint, Respondent was the qualifying officer for Showplace Builders Inc.
4. Section 601(1) of the Code prohibits a person from engaging in or attempting to engage in the practice of an occupation regulated under the Code without a license.

5. Section 604(c) of the Code requires the Board to penalize a licensee for violating a rule of conduct of an occupation.

6. Section 604(h) of the Code requires the Board to penalize a licensee for violating any other provision of the Code or a rule promulgated under the Code for which a penalty is not otherwise prescribed.

7. Section 2404a of the Code requires a licensee to provide information relating to his or her individual license and to any license issued to that person as a qualifying officer of another entity in the contract.

8. Section 2405(1) of the Code provides that a qualifying officer is responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with Article 24 and the rules promulgated thereunder.

9. Section 2411(2)(a) of the Code requires the Board to penalize a licensee for abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

10. Section 2411(2)(e) of the Code requires the Board to penalize a licensee for a willful violation of the building laws of this state or a political subdivision of this state.

11. Mich Admin Code, R 338.1551(2) requires a licensee to reply to the Department within 15 days from receipt of a complaint and confirm or deny the justification of the complaint.

12. Section 514 of the Code authorizes the Board to assess penalties against licensees under section 602 of the Code based on an administrative law hearings examiner's hearing report.

FACTUAL ALLEGATIONS

13. On or about February 22, 2016 and May 2, 2016, Respondent, on behalf of Showplace Builders Inc., contracted with Joel] and Barbara (to remodel the kitchen and two bathrooms at their home in Royal Oak, Michigan in the amount of \$45,095. The contract did not include the license information for Respondent or Showplace Builders Inc.

14. In accordance with the terms of the contract, Mr. Blostein and Ms. Oppewall made payments totaling \$37,867 to Showplace Builders Inc.

15. Respondent commenced work on April 19, 2016 and stopped work in September 2016. For the majority of this time period, Respondent did not have an active residential builder license.

16. In October 2016, the City of Royal Oak Building Inspector inspected the contracted work at the subject property and found the following violations of the Michigan Residential Code:

- R 105.1: Failure to comply with permit requirements.
- R 703.1: Failure to comply with exterior covering requirements.
- R 703.4: Failure to comply with flashing requirements.
- R 302.11: Failure to comply with fireblocking requirements.
- R 311.7.4.1: Failure to comply with riser height requirements.

17. On or about October 6 and 20, 2016, the City of Royal Oak issued civil infractions against Respondent for failing to obtain a building permit.

18. Mr. Blostein and Ms. Oppewall hired a new contractor to redo Respondent's substandard work and complete the contracted work.

19. On or about May 4, 2017, the Department notified Respondent that Mr. Blostein and Ms. Oppewall had filed a complaint based on the aforementioned conduct. Respondent failed to respond to the Department's notice.

COUNT I

20. Respondent's conduct as described above constitutes unlicensed activity, contrary to section 601(1) of the Code, in violation of section 604(h) of the Code.

COUNT II

21. Respondent's conduct as described above constitutes a failure to include license information in a contract, contrary to section 2404a of the Code, in violation of section 604(h) of the Code.

COUNT III

22. Respondent's conduct as described above constitutes abandonment, contrary to section 2411(2)(a) of the Code, in violation of section 604(h) of the Code.

COUNT IV

23. Respondent's conduct as described above constitutes a violation of the building laws of this state, contrary to section 2411(2)(e) of the Code, in violation of section 604(h) of the Code.

COUNT V

24. Respondent's conduct as described above constitutes a failure to reply to the Department within 15 days from receipt of a complaint, contrary to Mich Admin Code, R 338.1551(2), in violation of sections 604(c) and (h) of the Code.

THEREFORE, Complainant Department of Licensing and Regulatory Affairs hereby commences proceedings pursuant to the Administrative Procedures Act of 1969; MCL 24.201 *et seq.*, the Occupational Code, MCL 339.101 *et seq.*, and the associated administrative rules to determine whether disciplinary action should be taken by the Department of Licensing and Regulatory Affairs, pursuant to the Occupational Code, for the reasons set forth herein.

Any written response shall be submitted to the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, Michigan 48909, with a copy to the undersigned assistant attorney general.

Respectfully submitted,

BILL SCHUETTE
Attorney General

M. Catherine Waskiewicz

M. Catherine Waskiewicz (P73340)
Assistant Attorney General
Licensing & Regulation Division
525 W. Ottawa, 3rd Floor, Williams Bldg.
P.O. Box 30758
Lansing, Michigan 48909
(517) 373-1146

Dated: September 5, 2017