

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

BENNY'S CONSTRUCTION INC.
License No. 21-02-175029,
Respondent,

and

BENJAMIN DAVID FETTIG
License No. 21-01-156795
Respondent.

File Nos. 21-16-328889
21-16-328890
Consent Order and Stipulation

CONSENT ORDER

On March 15, 2017, the Department of Licensing and Regulatory Affairs executed a Formal Complaint charging Respondents with violating the Occupational Code, MCL 339.101 *et seq.*

Respondents have admitted that the facts alleged in the Complaint are true and constitute violation(s) of MCL 339.604(c) and 339.2411(2)(h). The Michigan Board of Residential Builders and Maintenance and Alteration Contractors has reviewed this Consent Order and Stipulation and agrees that the public interest is best served by resolution of the outstanding Complaint.

Therefore, IT IS FOUND that the facts alleged in the Complaint are true and constitute violation(s) of MCL 339.604(c) and 339.2411(2)(h).

IT IS ORDERED that for the cited violation(s) of the Occupational Code, Respondents are FINED \$500.00, jointly and severally, to be paid to the State of Michigan within 60 days of the effective date of this Order.

IT IS FURTHER ORDERED that the fine shall be mailed to the **Department of Licensing and Regulatory Affairs, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, MI 48909**. The fine shall be paid by check or money order, made payable to the State of Michigan, and the check or money order shall clearly display file numbers 21-16-328889 and 21-16-328890.

IT IS FURTHER ORDERED that failure to comply with the terms of this Order shall result in SUSPENSION of all licenses or registrations held by Respondents under Article 24 of the Occupational Code and in the denial of any license or registration renewal until compliance with this Order.

IT IS FURTHER ORDERED that this Order shall be effective on the date signed by the Board, as set forth below.

**MICHIGAN BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE AND ALTERATION CONTRACTORS**

By: 
Chairperson

Dated: 9/12/17

STIPULATION

1. The facts alleged in the Complaint are true and constitute violation(s) of MCL 339.604(c) and 339.2411(2)(h).


2. Respondents understand and intends that by signing this Stipulation Respondents are waiving the right, pursuant to the Occupational Code, the rules promulgated thereunder, and the Administrative Procedures Act, 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 Respondents are waiving the right to appear with an attorney and such witnesses as Respondents may desire to present a defense to the charges.

3. This matter is a public record required to be published and made available to the public pursuant to the Michigan Freedom of Information Act, MCL 15.231 *et seq.*

4. This Order is approved as to form and substance by Respondents and the Department and may be entered as the final order of the Board in this matter.

5. This proposal is conditioned upon acceptance by the Board. Respondents and the Department expressly reserve the right to further proceedings without prejudice should this Order be rejected.

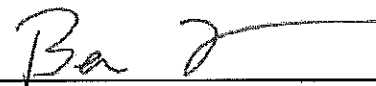
AGREED TO BY:



Kim Gaedeke, Director
Bureau of Professional Licensing
Department of Licensing and
Regulatory Affairs

Dated: 08/17/2017

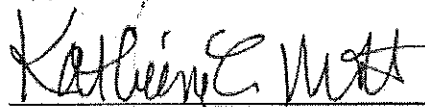
AGREED TO BY:



Benjamin David Fettig
Benny's Construction Inc
Respondents

Dated: 8/15/17

Approved as to form by:



Katherine E. Mott (P80865)
Attorney for Respondents

Dated: 8/15/2017

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FORMAL COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs (Department), by Kim Gaedeke, Director, Bureau of Professional Licensing, files this Complaint against Benny's Construction Inc. and Benjamin David Fettig (Respondents) as follows:

1. The Michigan Board of Residential Builders and Maintenance and Alteration Contractors (Board) is an administrative agency established by the Occupational Code, MCL 339.101 et seq. Pursuant to section 602 of the Occupational Code, supra, the Board is empowered to penalize licensees for violations of the Occupational Code.

2. Respondent Benny's Construction Inc. is licensed as a residential builder company, and Respondent Fettig is licensed as an individual residential builder in the state of Michigan.

3. On or around July 24, 2013, Respondents provided a project bid to Sue Keller (Homeowner) to build a detached garage, based on architectural plans provided by Homeowner. A copy of the project bid, marked Exhibit A, is attached and incorporated.

4. On September 23, 2014, Homeowner and Respondents revised the project bid, and Homeowner had Respondents go forward on the project bid, as modified. Respondents failed to reduce the finalized project bid to a written agreement, signed by both of the parties, and failed to provide a copy of a written and signed agreement to Homeowner. A copy of the revised (finalized) project bid, marked Exhibit B, is attached and incorporated.

5. From September 23, 2014, to January 7, 2016, the revised (finalized) project bid changed multiple times, adding approximately \$100,000.00 to the overall project. Over the course of the project, Respondents failed to reduce the changes to a written agreement, signed by both of the parties, and provide the written and agreed to changes to Homeowner.

6. On October 11, 2016, in Respondents' response to the Department's April 21, 2016 Notice to Respondent, Respondents admitted that the parties never had a "formal contract" for the project and also admitted that the project underwent numerous

changes. Further, Respondents failed to produce evidence that the parties' agreements, and the changes thereto, were ever reduced to a signed, written agreement.

COUNT I

Respondents' conduct, as described above, evidences a failure to reduce all agreements and changes to the agreements between a builder, contractor, and customer to writing and to have the agreements signed by all parties, contrary to Mich Admin Code, R 338.1533(1), in violation of section 604(c) of the Occupational Code, supra.

COUNT II

Respondents' conduct, as described above, evidences a failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to an agreement that involves the building of a garage, in violation of section 2411(2)(h) of the Occupational Code, supra.

The Department requests that this Complaint be served upon Respondents and Respondents be offered an opportunity to show compliance with all lawful requirements for retention of the license(s). If compliance is not shown, the Department further requests that formal proceedings be commenced pursuant to the Occupational Code, the rules promulgated thereunder, and the Administrative Procedures Act, MCL 24.201 et seq.

Pursuant to section 508(2) of the Occupational Code, supra, Respondents have 15 days from the date of receipt of this Complaint to notify the Department of Respondents' decision to either negotiate a settlement of this matter, to demonstrate compliance with the Occupational Code, or to request an administrative hearing. Written notification of Respondents' selection shall be submitted to Kim Gaedeke, Director, Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI 48909. If Respondents fail to submit written notification within 15 days, this matter shall proceed to an administrative hearing.

Dated: 03/15/2017



Kim Gaedeke, Director
Bureau of Professional Licensing

Attachment

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