

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

BRIAN PATRICK KELLEY
License No. 21-01-209657 (Application Withdrawn)
21-01-216504

File No. 21-15-328242

Respondent.

CONSENT ORDER

On July 21, 2016, the Department of Licensing and Regulatory Affairs executed a Formal Complaint charging Respondent with violating the Occupational Code, MCL 339.101 *et seq.*

Respondent has admitted that the facts alleged in the Complaint are true, with the exception of Counts II, III, and IV, which shall be dismissed, and has agreed that the allegations constitute violation(s) of MCL 339.604(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, with the exception of Counts II, III, and IV, constitute violation(s) of MCL 339.604(h).

IT IS ORDERED that Counts II, III, and IV of the Complaint, are DISMISSED.

IT IS FURTHER ORDERED that for the cited violation(s) of the Occupational Code, Respondent is FINED \$5,000.00 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, 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 **21-15-328242**.

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 Respondent 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 30 days from the date signed by the Board, as set forth below.

MICHIGAN BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE AND ALTERATION CONTRACTORS

By: 
Chairperson

Dated: May 15, 2018

STIPULATION

1. Respondent and the Department agree that, pursuant to the principal of settlement and compromise, Counts II, III, and IV of the Complaint shall be dismissed by the Board.
2. The facts alleged in the Complaint, with the exception of Counts II, III, and IV, constitute violation(s) of MCL 339.604(h).
3. Respondent understands and intends that by signing this Stipulation Respondent is 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 Respondent is waiving the right to appear with an attorney and such witnesses as Respondent may desire to present a defense to the charges.

4. 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 24.231 *et seq.*

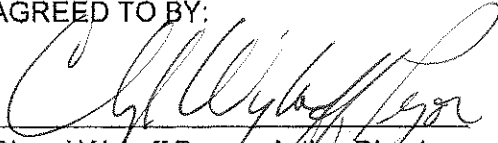
5. Factors taken into consideration in the formulation of this Order are as follows:

Respondent obtained his builder's license on November 2, 2017.

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

7. This proposal is conditioned upon acceptance by the Board. Respondent and the Department expressly reserve the right to further proceedings should this Order be rejected.

AGREED TO BY:


Cheryl Wykoff Pezon, Acting Director
Bureau of Professional Licensing
Department of Licensing and
Regulatory Affairs

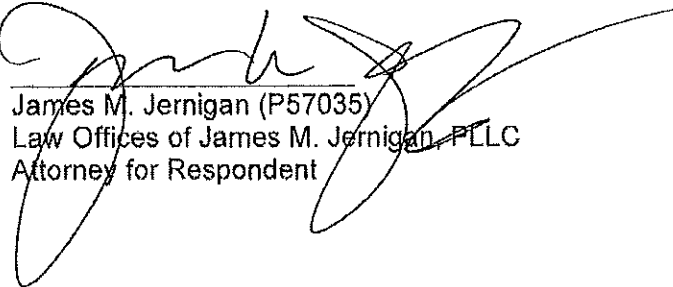
Dated: 2/22/18

AGREED TO BY:


Brian Patrick Kelley
Respondent

Dated: 1-17-18

Approved as to form:


James M. Jernigan (P57035)
Law Offices of James M. Jernigan, PLLC
Attorney for Respondent

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

BRIAN PATRICK KELLEY

License Number: 21-01-209657 (Pending)

File Number: 21-15-328242

FORMAL COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs (Complainant) by Kim Gaedeke, Director, Bureau of Professional Licensing, files this Complaint against Brian Patrick Kelley (Respondent) 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. On June 13, 2014, Respondent, an unlicensed individual, acting as an owner/agent for BK Builders, entered into a contract with Larry (Homeowner) to demolish an existing garage then build a new garage. Respondent, Poly Arch Inc., and Maxwell John Heiderer agreed to a 50/50 split on the Homeowner's contract, whereby Respondent would manage the labor and construction and Poly Arch Inc. and

Maxwell John Heiderer would supervise the job site. A copy of the contract, marked Exhibit A, is attached and incorporated.

3. On June 27, 2014, Respondent used the licenses of Poly Arch Inc., and Maxwell John Heiderer to secure a building permit. Based on Respondent's misrepresentations, the City of Plymouth issued Respondent a building permit. A copy of the building permit, marked Exhibit B, is attached and incorporated.

4. On December 10, 2015, Homeowner filed a Statement of Complaint with Complainant alleging Homeowner did not enter into a contract with Poly Arch Inc., and Maxwell John Heiderer, and Respondent obtained a building permit through misrepresentations.

COUNT I

Respondent's conduct, as described above, evidences engaging in or attempting to engage in the practice of an occupation regulated under this act or using a title designated in the this act without possessing a license issued by the department for the occupation, contrary to section 601(1) of the Occupational Code, supra, in violation of section 604(h) of the Occupational Code supra.

COUNT II

Respondent's conduct, as described above, evidences fraud, deceit, or dishonesty in practicing an occupation, in violation of section 604(b) of the Occupational Code, supra.

COUNT III

Respondent's conduct, as described above, evidences a willful violation of the building laws of this state or of a political subdivision of this state, contrary to section 2411(2)(e) of the Occupational Code, supra, in violation of section 604(h) of the Occupational Code, supra.

COUNT IV


Respondent's conduct, as described above, evidences acceptance or performance of a contract procured by a person not licensed under the Occupational Code, contrary to Michigan Administrative Code, R 338.1536, in violation of section 604(c) of the Occupational Code, supra.

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

Pursuant to section 508(2) of the Occupational Code, supra, Respondent has 15 days from the date of receipt of this Complaint to notify Complainant of Respondent's 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 Respondent's selection shall be submitted to Complainant, Kim Gaedeke,

Director, Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI 48909. If Respondent fails to submit written notification within 15 days, this matter shall proceed to an administrative hearing.

Dated: 7/21/2016



Kim Gaedeke, Director
Bureau of Professional Licensing

Attachments

This is the final page of a Formal Complaint in the matter of Brian Patrick Kelley, File Number 21-15-328242, before the Michigan Board of Residential Builders and Maintenance and Alteration Contractors, consisting of four pages, this page included.

LFM