

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

BAVARIAN BUILDERS, INC.
License Number: 21-02-123222

and

TIMOTHY W. ZEHNDER,
QUALIFYING OFFICER
License Number: 21-01-061002

File Numbers: 21-15-326244
21-15-326245

CONSENT ORDER

On April 1, 2016, the Department of Licensing and Regulatory Affairs (Department) executed a Formal Complaint (Complaint) charging Bavarian Builders, Inc. and Timothy W. Zehnder (Respondents) with violating section(s) 604(b), 604(h), and 2411(2)(l) of 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 the Occupational Code. The Michigan Board of Residential Builders and Maintenance and Alteration Contractors (Board) has reviewed this Consent Order and Stipulation (Order) and agrees that the public interest is best served by resolution of the outstanding Complaint.

IT IS FOUND that the facts alleged in the Complaint are true and constitute violation(s) of section(s) 604(b), 604(h), and 2411(2)(l) of the Occupational Code, supra.

Accordingly, IT IS ORDERED that for the cited violation(s) of the Occupational Code, Respondents are FINED \$3,000.00 to be paid to the State of Michigan within 30 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, Legal Affairs 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 **21-15-326244** and **21-15-326245**.

IT IS FURTHER ORDERED that Respondents' licenses to practice as residential builders in the state of Michigan are PERMANENTLY SURRENDERED, commencing on the date of the Department's receipt of the fine payment.

IT IS FURTHER ORDERED that the surrender of licensure shall be deemed PERMANENT and that the licenses shall not be renewed, reinstated, reissued or reactivated, limited or otherwise, at any future date.

IT IS FURTHER ORDERED that this Order shall not be modifiable for any cause whatsoever.

CONTINUED ON NEXT PAGE

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: 1-26-12

STIPULATION

1. The facts alleged in the Complaint are true and constitute violation(s) of section(s) 604(b), 604(h), and 2411(2)(l) of the Occupational Code, supra.
2. Respondents understand and intend 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.

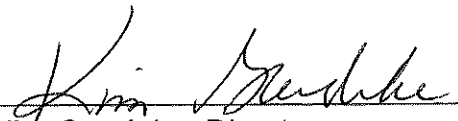
4. Factors taken into consideration in the formulation of this Order are as follows:

Respondents offer to resolve the Complaint proceeding by accepting sanctions against them in the amount of \$3,000.00 to be paid within 30 days of the effective date of this Order and that Bavarian Builders, Inc.'s License No. 21-02-123222 and Timothy W. Zehnder's License No. 21-01-061002 be terminated.

5. 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.

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

AGREED TO BY:


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

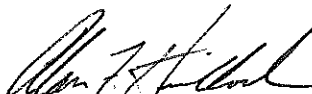
Dated: 10/06/2016

AGREED TO BY:


Timothy W. Zehnder
Bavarian Builders, Inc.
Respondents

Dated: 9/14/16

Approved as to form by:


Alan F. Himelhoch (P41665)
Attorney for Respondents

This is the final page of a Consent Order and Stipulation in the matter of Bavarian Builders, Inc. and Timothy W. Zehnder, File Numbers 21-15-326244 and 21-15-326245, before the Michigan Board of Residential Builders and Maintenance and Alteration Contractors, consisting of four pages, this page included.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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In the Matter of

BAVARIAN BUILDERS, INC
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and

TIMOTHY W. ZEHNDER
License Number: 21-01-061002

File Numbers: 21-15-326244
21-15-326245

FORMAL COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs (Complainant) by Kim Gaedeke, Director, Bureau of Professional Licensing, files this Complaint against Bavarian Builders, Inc. and Timothy W. Zehnder (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, 1980 PA 299, as amended; 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. Bavarian Builders, Inc. and Timothy W. Zehnder are licensed as residential builders in the state of Michigan.

3. On October 18, 2013, Respondents entered into an agreement with [REDACTED] Homeowners) to build a new home for \$534,886.53. A copy of the agreement, marked Exhibit A, is attached and incorporated.

4. On February 23, 2015, Homeowners filed a Statement of Complaint with Complainant alleging that Respondents used a portion of the money paid by Homeowners to finance other projects. As a result of Respondents' failure to pay, five subcontractors filed construction liens and a notice of furnishing against Homeowners, totaling \$45,140.92. Homeowners were notified by other contractors of potential liens totaling an additional \$43,908.53.

5. On May 6, 2015, Detective [REDACTED] with the Tuscola County Sheriff's Department, conducted an analysis of Respondents' bank account from the date of receipt of the last payment from Homeowners' construction fund, September 26, 2014, and concluded that a minimum of \$62,130.71 was spent on other items, other than paying for work on Homeowners' project.

6. On approximately May 13, 2015, Respondents submitted a written response to the Statement of Complaint stating that Respondents "paid 100% of the proceeds received from . . . [Homeowners], to pay costs and expenses associated with the [Homeowners'] job, with the exception of approximately \$20,0000 which was paid to subcontractors and suppliers on two other construction projects."

COUNT I

Respondents' conduct, as described above, evidences diversion or use of funds received for completion of a specific construction project for any other construction project or operation, obligation, or purposes, contrary to section 2411(2)(b) of the Occupational Code, supra, in violation of section 604(h) of the Occupational Code, supra.

COUNT II

Respondents' conduct, as described above, evidences failing to satisfy judgments or liens or failing to pay an obligation as it becomes due in the ordinary course of business, contrary to section 2411(2)(l) of the Occupational Code, supra.

COUNT III

Respondents' conduct, as described above, evidences the practice of fraud, deceit, or dishonesty in practicing an occupation, contrary to section 604(b) 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 licenses. 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 of 1969, 1969 PA 306, as amended; 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 Complainant 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 Complainant, 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:

04/01/2016



Kim Gaedeke, Director
Bureau of Professional Licensing

Attachments

This is the final page of a Formal Complaint in the matter of Bavarian Builders, Inc., File Number 21-15-326244 and Timothy W. Zehnder, File Number 21-15-326245, before the Michigan Board of Residential Builders and Maintenance and Alteration Contractors, consisting of four pages, this page included.

BCW