

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

In the Matter of

BRYAN ALLEN WINSTEN,
License No. 21-01-135034

Complaint No. 21-17-333417

CONSENT ORDER AND STIPULATION

CONSENT ORDER

A formal complaint was filed on February 8, 2018 charging Bryan Allen Winsten (Respondent) with having violated sections 601, 602, 604(c), 604(h), 604(l), 2411(2)(a), 2411(2)(c), and 2411(2)(j) of the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* and Mich Admin Code, R 1551(2).

Based on the formal complaint and an accompanying affidavit from Jon Campbell, Director of the Investigations and Inspections Division of the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, the Department summarily suspended Respondent's license to practice as a residential builder by order dated February 13, 2018.

The parties stipulated to dissolution of the order of summary suspension, after which the administrative hearing officer entered an order dated March 22, 2018 dissolving the summary suspension.

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 a violation of

sections 601, 602, 604(c), 604(h), 604(l), and 2411(2)(j) of the Occupational Code and Mich Admin Code, R 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 One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) to be paid by check, money order or cashier's check made payable to the State of Michigan (with complaint number 21-17-333417 clearly indicated on the check or money order), and shall be payable within ninety (90) days of the effective date of this order. 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.

Within ninety (90) days of the effective date of this order, Respondent shall submit satisfactory proof that an application for a license as a residential builder.

Counts III and IV, and the allegations of paragraph 16 of the complaint, alleging a violation of sections 2411(2)(a) and 2411(2)(c) of the Occupational Code, are DISMISSED.

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.

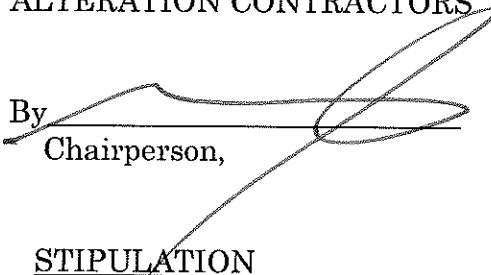
Respondent shall be responsible for the timely compliance with the terms of this consent order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this order.

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 9/10/14

MICHIGAN BOARD OF RESIDENTIAL
BUILDERS AND MAINTENANCE &
ALTERATION CONTRACTORS

By 
Chairperson,

STIPULATION

The parties stipulate as follows:

1. The facts alleged in the complaint are true and constitute a violation of the Occupational Code, except as set forth herein.
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, 1969 PA 306, as amended, 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, 1976 PA 442, as amended.

5. The Board may enter the above Consent Order, supported by Board conferee Bradley Laackman. Mr. Laackman 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. Laackman and the parties considered the following factors in reaching this agreement:

A. Respondent belatedly sent a response to the allegations against him to Petitioner. This response was not forwarded to the undersigned assistant attorney general until after the filing of the Formal Complaint and service of the Order of Summary Suspension, although Respondent had sent it to Petitioner some time before.

B. As set out in Respondent's response and in documentation which he submitted with it, Respondent undertook considerable work on design of the pool and in preparation for its construction. As he explained to the homeowners, the actual construction could not begin until after a utility company removed overhead wires which were directly above the site which the homeowners had selected for the pool.

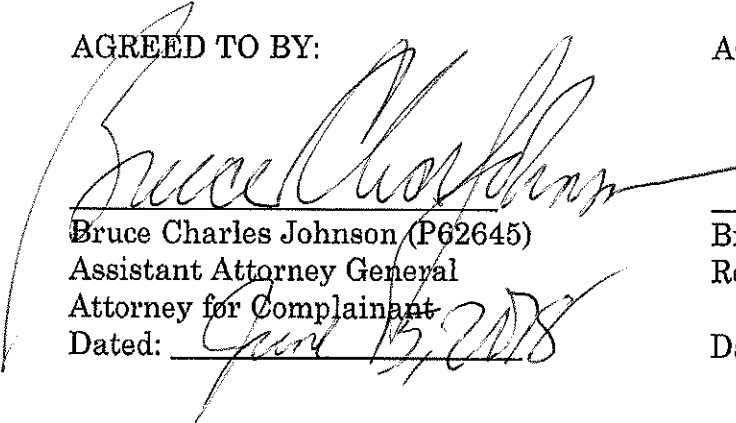
C. Respondent was unaware that he needed a builder's license for a company owned by himself, believing that his own license applied to the company as well. When he learned that he was wrong, he undertook to rectify the omission.

D. Respondent has been licensed since September 11, 1996, and he has never previously been disciplined.

E. Respondent was fully cooperative in resolving this matter. He took full responsibility for the violations he committed, and undertook to take measures to avoid any further violations in the future.

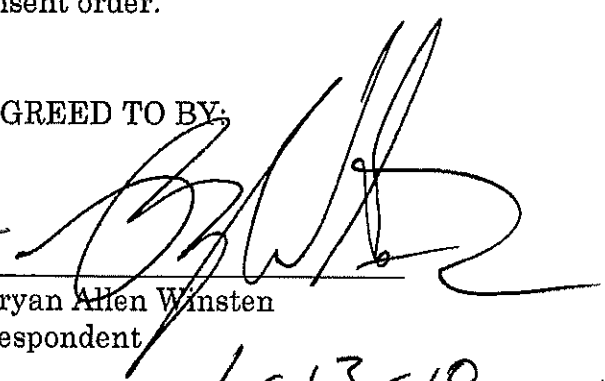
By signing this stipulation, the parties confirm that they have read, understand and agree with the terms of the consent order.

AGREED TO BY:


Bruce Charles Johnson (P62645)
Assistant Attorney General
Attorney for Complainant

Dated: June 13, 2018

AGREED TO BY:


Bryan Allen Winsten
Respondent

Dated: 6-13-18

Bureau of Professional Licensing
Approved by:


Cheryl Wykoff Pezon, Acting Director

6/20/18
Date

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

BRYAN ALLEN WINSTEN
Residential Builder
License No. 21-01-135034

Complaint No. 21-17-333417

FORMAL COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General, Bruce Charles Johnson, on behalf of Complainant Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, files this Formal Complaint against Respondent Bryan Allen Winsten, 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 is currently licensed as a residential builder pursuant to the Code. Respondent is also the Resident Agent of Oasis Custom Pools and Spas Inc., which is carrying on business as a builder despite not being licensed.
3. A Complaint against Respondent confirming to the requirements of § 501 of 1980 PA 299, as amended, was filed with Complainant on July 18, 2017.

4. Sections 601 and 2403 of the Code, require, with exceptions not pertinent here, that a person be licensed as a residential builder in order to perform residential construction work in this state.

5. Section 602 of the Code sets out penalties applicable to licensee for violating the Code or of a rule or order promulgated or issued under the Occupational Code.

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

7. Section 604(h) of the Code requires the Board to penalize a licensee for violation of a provision of the Code or of a rule promulgated under the Occupational Code for which a penalty is not otherwise prescribed.

8. Sections 604(l) and 2411(2)(j) of the Code requires the Board to penalize a licensee who aids or abets an unlicensed person in the practice of an occupation for which a license is required.

9. Mich Admin Code, R 1551(2) requires the Board to penalize a licensee who fails to respond to a complaint against the licensee within fifteen days of service.

10. Section 2411(2)(a) of the Code requires the Board to penalize a licensee for abandonment of a construction project without a legal excuse.

11. Section 2411(2)(c) of the Code requires the Board to penalize a licensee for failure to account for or remit money coming into the person's possession that belongs to others.

12. Section 505 of the Code permits the summary suspension of a license to practice an occupation where an imminent threat to the public health, safety and welfare exists.

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

FACTUAL ALLEGATIONS

14. On April 20, 2017, Respondent, on behalf of Oasis Custom Pools and Spas Inc., an unlicensed entity, of which Respondent is the resident agent, entered a contract with Mr. and Mrs. David Huynh to build a swimming pool for them at their home located at 33876 Stonewood Drive in Sterling Heights, Michigan.

15. The Huynhs paid Respondent a ten percent advance deposit of \$5,895 to Oasis Custom Pools and Spas for the construction.

16. Respondent never performed the work for which he contracted with the Huynhs, and failed to reimburse them for the money they paid to him.

17. The Department served a copy of the complaint the Huynhs filed against Respondent on September 11, 2017, with notice of his duty to respond to it within fifteen days. To date, he has not responded to it, notwithstanding the Department's repeated attempts to contact him by U.S. mail, by email, by telephone, and in person at his home, reminding him of his duty to respond.

COUNT I

18. Respondent's conduct as described above constitutes aiding or abetting an unlicensed person in practicing as a residential builder, in violation of sections 601, 602, 604(c), 604(h), 604(l) and 2411(2)(j) of the Code.

COUNT II

19. Respondent's conduct as described above constitutes failure to answer a complaint within fifteen days of being served with it in violation of Mich Admin Code, R 1551(2) and section 604(h) of the Code.

COUNT III

20. Respondent's conduct as described above constitutes abandoning a construction project without a legal excuse, in violation of sections 2411(2)(a) and 604(h) of the Code.

COUNT IV

21. Respondent's conduct as described above constitutes failing to account for or remit money coming into his possession that belongs to others, in violation of sections 2411(2)(c) and 604(h) of the Code.

Based upon the conduct above, Respondent has acted contrary to the Occupational Code, 1980 PA 299, as amended, constituting grounds for the assessment of a penalty as defined in § 602 of the Occupational Code.

WHEREFORE, Complainant, Department of Licensing and Regulatory Affairs, hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, PA 306, as amended, MCL 24.201-328 and the Occupational Code,

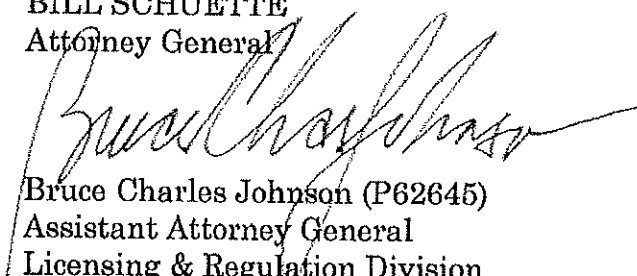
supra, to determine whether disciplinary action should be taken by the Department of Licensing and Regulatory Affairs, pursuant to the Occupational Code, for the reasons set forth herein.

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.

FURTHER, Complaint requests that pending the hearing and final determination Respondent's license to work as a residential builder in the state of Michigan continue to be summarily suspended pursuant to section 92 of the Administrative Procedures Act and Section 505(1) of the Occupational Code for the reason that, based upon the allegations set forth herein, to permit Respondent to continue to practice the profession constitutes a danger to the public health, safety, and welfare requiring emergency action.

Respectfully submitted,

BILL SCHUETTE
Attorney General



Bruce Charles Johnson (P62645)
Assistant Attorney General
Licensing & Regulation Division
525 W. Ottawa, 3rd Floor, Wms Bldg.
P.O. Box 30758
Lansing, Michigan 48909
(517) 373-1146

Dated: February 8, 2018

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30758
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

June 15, 2018

Michael Draminski, Manager
Bureau of Professional Licensing
Compliance Section
Department of Licensing and Regulatory Affairs
P.O. Box 30670
Lansing, Michigan 48909

Handwritten signature and date: [Signature] 6/20/18

RECEIVED
JUN 19 2018
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
ADMINISTRATION

RE: Bryan Allen Winsten
Complaint No. 21-17-333417

Dear Mr. Draminski:

Enclosed is a proposed Consent Order and Stipulation to be transmitted for consideration by the Board's Disciplinary Subcommittee at its next available meeting. Also enclosed is a copy of the Complaint.

If the Subcommittee accepts the proposed resolution, a true copy of the fully executed document should be provided to this office, as well as to Respondent.

Thank you.

Sincerely,

Handwritten signature of Bruce Charles Johnson

Bruce Charles Johnson
Assistant Attorney General
Licensing & Regulation Division
Telephone: (517) 373-1146
Fax: (517) 241-1997

BCJ/jll
Enclosures