

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

In the Matter of

BURNEY D. HIERS
License No. 21-01-211041,
Respondent.

Docket No. 17-028389
File No. 21-17-332682

FINAL ORDER

On December 6, 2017, the Department of Attorney General, Licensing and Regulation Division, on behalf of the Department of Licensing and Regulatory Affairs, executed a Formal Complaint charging Respondent with violating the Occupational Code, MCL 339.101 *et seq.*

An administrative hearing was held in this matter before an administrative law judge who, on May 9, 2018, issued a Hearing Report setting forth Findings of Fact and Conclusions of Law.

The Michigan Board of Residential Builders and Maintenance and Alteration Contractors (Board), having reviewed the administrative record, considered this matter at a regularly scheduled meeting held in Lansing, Michigan on September 11, 2018, and received the administrative law judge's Findings of Fact and Conclusions of Law in the Hearing Report.

IT IS ORDERED that for violating MCL 339.601, 339.602, 339.604(b), (c), (h), and (l) and 339.2411(2)(a), (c), (e) and (j), Respondent's license to practice as an individual builder in the state of Michigan is REVOKED.

IT IS FURTHER ORDERED that reinstatement of a license which has been revoked is not automatic and, in the event Respondent applies for reinstatement of the license, application shall be in accordance with MCL 339.411(5).

IT IS FURTHER ORDERED that Respondent is FINED \$10,000.00 to be paid to the State of Michigan within 30 days from the effective date of this Order.

IT IS FURTHER ORDERED that the fine shall be mailed to the **Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, P.O. Box 30255, 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 number **21-17-332682**.

IT IS FURTHER ORDERED that Respondent shall pay RESTITUTION in the amount of \$131,000.00 to Peggy L. Patterson within six (6) months from the effective date of this Order.

IT IS FURTHER ORDERED that Respondent shall submit acceptable written evidence of payment of the ordered restitution to the **Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, P.O. Box 30254, Lansing, MI 48909**.

IT IS FURTHER ORDERED that, in accordance with MCL 339.411(3)(c), 339.602(c) and 339.604(k), no application for licensure, renewal, relicensure, or reinstatement shall be granted until all final orders of the Board have been satisfied in full.

IT IS FURTHER ORDERED that in the event Respondent violates any provision of this Order, the Board may proceed to take disciplinary action pursuant to MCL 339.604(k).

This Final Order 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.*

IT IS FURTHER ORDERED that this Order shall be effective 30 days from the date signed by the Chairperson of the Board or authorized representative, as set forth below.

Dated: October 12, 2018

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

By: Deanne Barnes
for Keith Lambert, Director
Bureau of Construction Codes

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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

BURNEY D. HIERS,
Residential Builder
License No. 21-01-211041

Complaint No. 21-17-332682

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 Burney D. Hiers, 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.
3. A Complaint against Respondent conforming to the requirements of § 501 of 1980 PA 299, as amended, was filed with Complainant on May 10, 2017.

4. Section 601 and 2403 of the Occupational Code, require, with exceptions not pertinent here, that a person¹ be licensed as a residential builder in order to perform residential construction work in this state.

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

6. Section 604(b) of the Occupational Code requires the Board to penalize licensee for committing fraud, deceit or dishonesty in the practice of an occupation.

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

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

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

10. R 105.1 of the 2009 Michigan Residential Code and Section 2411(2)(e) of the Occupational Code require the Board to penalize a licensee for performing home repair work on a residence without first obtaining the proper permits.

¹ Defined by section 1105(5)(b) of the Occupational Code as including, among other types of entities, limited liability companies.

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

12. Section 2411(2)(c) of the Occupational 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.

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 August 18, 2016, Respondent, acting on behalf of Building Constructors & Industrial, LLC ("BCI"), entered a contract with Ken Patterson to demolish a home located at 1215 Fair Oak Avenue in Niles, Michigan, and to build a new home on the same site. Mr. Patterson was acting in the interests of his mother, Peggy Patterson, who had lived on the site before the home had been hit by a tornado. The contract called for payment to BCI of \$141,010.15, of which at least \$131,000.00 was actually paid.

15. BCI is not licensed as a residential builder. BCI demolished the old home, and began but did not complete construction of the new home.

16. BCI began the demolition and construction work without obtaining the necessary permits.

17. Although the City of Niles ultimately issued a building permit and a zoning compliance permit for the work on the property, it determined, upon

inspecting the construction site, (1) that the structure, including its foundation and framing, could not pass inspection, and (2) that the new home was incorrectly sited on the property, in violation of the zoning compliance permit. The City therefore issued a Stop Work Order as to the property on or about December 1, 2016.

18. In the course of the construction, the building materials for the structure degraded to the point that they were not fit for use on any part of it.

19. BCI abandoned the project without completing it, and without a legal excuse for doing so, and did not return the money paid to it.

COUNT I

20. Respondent's conduct as described above constitutes performing home repair work on a residence without first obtaining a permit, in violation of R 105.1 of the 2009 Michigan Residential Code and sections 604(c) and 2411(2)(e) of the Occupational Code.

COUNT II

21. Respondent's conduct as described above constitutes fraud, deceit or dishonesty in the practice of an occupation, in violation of sections 604(b) and (c) of the Occupational Code.

COUNT III

22. Respondent's conduct as described above constitutes violation of the zoning laws and construction code of the City of Niles, in violation of sections 604(c) and 2411(2)(e) of the Occupational Code.

COUNT IV

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

COUNT V

24. 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 604(h) and 2411(2)(c) of the Occupational Code.

COUNT VI

25. Respondents' 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 Occupational Code.

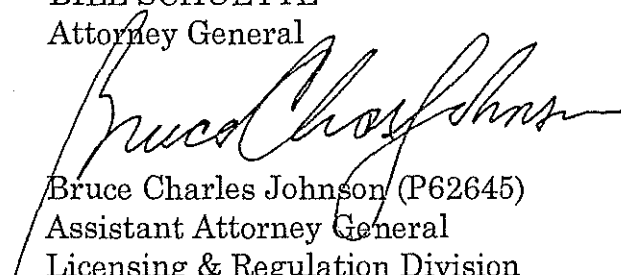
WHEREFORE, Complainant, Department of Licensing and Regulatory Affairs, hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, PA 306, as amended, MCL 24.201-328 and the Occupational Code, *supra*, to determine whether disciplinary action should be taken by the Department 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.

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: December 6, 2017

LF: 2017-0201768-B/Hiers, Burney D., 332682 (Res Bldr)/Complaint - Formal - 2017-11-28