

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

EVELYN MARY VITANIS MODDERS,
License No. 21-01-198682

Complaint No. 21-17-331478

CONSENT ORDER AND STIPULATION

CONSENT ORDER

A formal complaint was filed on June 6, 2017 charging Evelyn Mary Vitanis Modders (Respondent) with having violated sections 601, 602, 604(c), 604(h), 604(l), 2411(2)(e), 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 R 105.1 of the 2009 Michigan Residential Code.

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 violations of sections 601, 602, 604(c), 604(h), 604(l), 2411(2)(e) and 2411(2)(j) of the Occupational Code and R 105.1 of the 2009 Michigan Residential Code. 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 Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) to be paid by check, money order or cashier's check made payable to the

State of Michigan (with complaint number 21-17-331478 clearly indicated on the check or money order), and shall be payable within thirty (30) 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.

Counts II and III of the complaint, alleging a violation of sections 604(h), 2411(2)a) and 2411(2)(c) of the Occupational Code, are DISMISSED, and paragraphs 10-11, 16, and 18-19 of the complaint are WITHDRAWN.

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 12/12/17

MICHIGAN BOARD OF RESIDENTIAL
BUILDERS AND MAINTENANCE AND
ALTERATION CONTRACTORS

By 
Chairperson,

STIPULATION

The parties stipulate as follows:

1. Respondent does not contest the allegations of fact and law in the complaint. Respondent understands that, by pleading no contest, she does not admit the truth of the allegations but agrees that the Board may treat the allegations as true for resolution of the complaint and may enter an order treating the allegations as true.
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, she 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 presented convincing documentary evidence at the compliance conference indicating that Respondent did not abandon the project without cause, but rather ceased work after receiving communications which appeared to indicate that the homeowners wanted Respondent to do so. At this time, the money that the homeowners had paid on the project had all been spent, making restitution impossible.

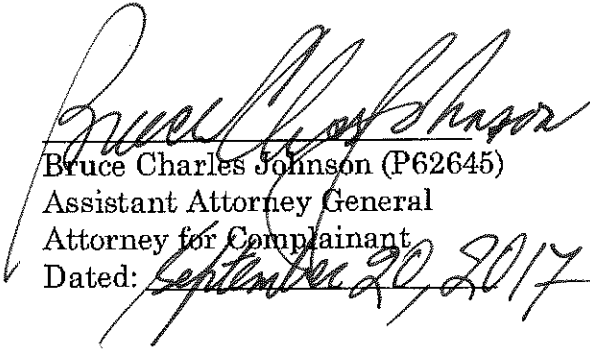
B. Respondent has been licensed as a residential builder since September 2, 2010, and has never previously been disciplined.

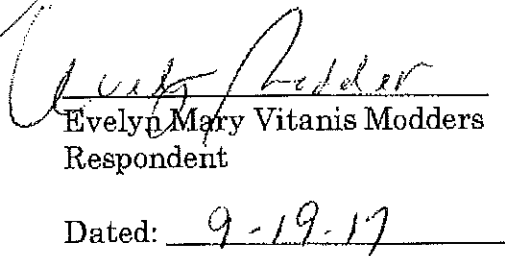
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By signing this stipulation, the parties confirm that they have read, understand and agree with the terms of the consent order.

AGREED TO BY:

AGREED TO BY:


Bruce Charles Johnson (P62645)
Assistant Attorney General
Attorney for Complainant
Dated: September 20, 2017


Evelyn Mary Vitanis Modders
Respondent
Dated: 9-19-17

Bureau of Professional Licensing
Approved by:


Kim Gaedeke, Director

09/25/2017
Date

LF: 2017-0182154-B/Modders, Evelyn Mary Vitanis, 331478 (Res Bldr)/Consent -- Order and Stipulation -- 2017-08-28

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

In the Matter of

EVELYN MARY VITANIS MODDERS,
Residential Builder
License No. 21-01-198682

Complaint No. 21-17-331478

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 Evelyn Mary Vitanis Modders, alleging upon information and belief as follows:

1. The Board of Residential Builders Maintenance & 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 Modders Construction, LLC.
3. A Complaint against Respondent conforming to the requirements of § 501 of 1980 PA 299, as amended, was filed with Complainant on January 9, 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(c) of the Occupational Code requires the Board to penalize a licensee for a violation of a rule of conduct of an occupation.

7. 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.

8. 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.

9. 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.

10. 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.

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)(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.

12. 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

13. On January 14, 2016, Modders Construction, LLC, of which Respondent is the resident agent, entered a contract to perform construction work on a residential property owned by Anthony and Kara H. located at in Metamora, Michigan. The contract which was signed on behalf of Modders Construction, LLC by Jody Thomas, called for payment to Modders Construction, LLC of \$213,290 of which approximately \$178,000 was actually paid.

14. Modders Construction, LLC is not licensed as a residential builder.

15. Modders Construction, LLC performed the restoration work without obtaining the necessary permits.

16. Modders Construction, LLC 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

17. 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

18. 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 III

19. 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 IV

20. 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.

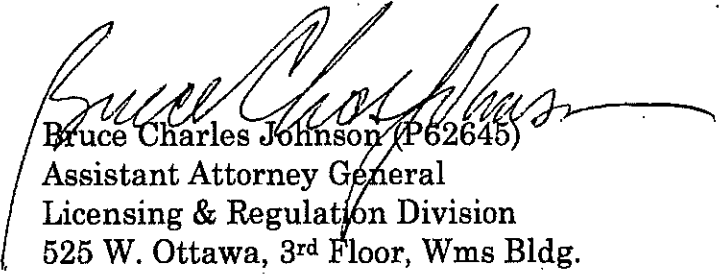
WHEREFORE, Complainant, Department of Licensing and Regulatory Affairs, hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, PA 306, as amended, MCL 24.201-328 and the Occupational Code, *supra*, to determine whether disciplinary action should be taken by the Department 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: June 6 2017

LF: 2017-0182154-B/Modders, Evelyn Mary Vitanis , 331478 (Res Bldr)/Complaint - Formal - 2017-06-01