

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

CONSERVABUILDERS CO.
License No. 21-02-201119,
Respondent.

Docket No. 18-004598
File No. 21-17-328210

AND

ERIC JOHN BRAKKE
License No. 21-01-116795
Respondent.

Docket No. 18-004597
File No. 21-17-328211

FINAL ORDER

On March 16, 2016, the Department of Licensing and Regulatory Affairs executed a First Superseding Formal Complaint charging Respondents 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 July 27, 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 339.604(b), (d) and (h) and 339.2411(2)(a), (b)¹, (c) and (l), Respondents' licenses to practice as an individual builder and a builder company in the state of Michigan are REVOKED, commencing on the effective date of this Order.

IT IS FURTHER ORDERED that reinstatement of a license which has been revoked is not automatic and, in the event Respondents apply for reinstatement of the licenses, application shall be in accordance with MCL 339.411(5).

IT IS FURTHER ORDERED that Respondents are, jointly and severally, FINED \$20,000.00 to be paid to the State of Michigan within 60 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 numbers 21-17-328211 and 21-17-328210.

IT IS FURTHER ORDERED that Respondents shall, jointly and severally, satisfy the judgement, including statutory interest as determined by the Court, ordered by the State of Michigan, 52-1st Judicial District Court, Novi, Michigan, in case number 16-C06146-GC within 60 days from the effective date of this Order.

¹ Count V of the First Superseding Administrative Complaint erroneously identifies the charged section of the Occupational Code as MCL 339.2411(2)(a). This typographical error is corrected in the Hearing Report.

IT IS FURTHER ORDERED that Respondents shall submit acceptable written evidence of satisfying the judgement, as set forth above, 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 Respondents violate 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: Keith Lambert
Keith Lambert, Director
Bureau of Construction Codes

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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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Respondents.

FIRST SUPERSEDING FORMAL COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, by Cheryl Wykoff Pezon, Acting Director, Bureau of Professional Licensing, complains against Respondents as follows:

1. The Michigan Board of Residential Builders and Maintenance and Alteration Contractors is an administrative agency established by the Occupational Code, MCL 339.101 *et seq.* Pursuant to MCL 339.602 of the Occupational Code, the Board is empowered to penalize persons for violations of the Occupational Code.

2. "Good moral character" is defined in MCL 338.41 as "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."

3. Respondent ConservaBuilders Co. is licensed as a residential builder company. On August 7, 2017, the license was suspended pursuant to MCL 339.2405(4) for failure to name a qualifying officer for the company.

4. Respondent Eric John Brakke was licensed as an individual residential builder from November 10, 1993, through May 31, 2017, when his license expired and was not renewed.

5. At all relevant times, Respondent Eric John Brakke was the owner and qualifying officer of Respondent ConservaBuilders Co. and, pursuant to MCL 339.2405(1), was responsible for exercising supervision and control of the building or construction operations necessary to secure full compliance with Article 24 of the Occupational Code and the rules promulgated thereunder.

6. On April 29, 2015, Thomas and Janet Mitchell (Homeowners) signed a contract with Respondents for construction of a Victorian conservatory (sunroom) on their home for a contract price of \$45,100. A copy of the contract, marked Exhibit 1, is attached and incorporated.

7. Per the terms of the agreement, Homeowners paid \$13,500 to Respondents as a down payment at the time of contract signing.

8. On April 29, 2015, Respondents provided Homeowners with another quote/invoice (final quote) for the sunroom project showing a new total price of \$48,000. The final quote was not signed by Homeowners and contained only the handwritten name

"Eric" at the bottom of the page. A copy of the final quote, marked Exhibit 2, is attached and incorporated.

9. On May 18, 2015, Homeowners gave Respondents another \$500 toward the sunroom project. The memo line on the payment check indicated that the funds were the "remainder of initial deposit for conservatory," despite the fact that homeowners had already paid the full \$13,500 deposit as stated in both the initial contract and the final quote.

10. After receiving Homeowners' down payments, Respondents arranged for a subcontractor to pour the cement foundation for the sunroom. However, Respondents failed to include this work in the original contract or the final quote. As a result, Homeowners were obliged to pay the contractor \$5,490, over and above the agreed price for the project.

11. After the foundation was poured, Respondents abandoned the project and did no further work in furtherance of the contract.

12. When Homeowners contacted Respondents and inquired about the cause of the delay, Respondents demanded that Homeowners tender the entire balance of the contract price or Respondents would not perform the contracted work. Homeowners refused.

13. Both the contract and the final quote expressly required only a \$13,500 down payment. Moreover, the final quote stated that payment terms were to be

"30/30/30/10," indicating three partial payments of 30 percent would be required as construction progressed with a final payment of the remaining 10 percent upon completion. Respondents fraudulently and deceitfully demanded full payment of the entire contracted amount up front, contrary to the contract terms.

14. Furthermore, despite failing to do any work on the project, Respondents fraudulently and deceitfully retained Homeowners' full down payment and used the funds for other projects, operations, obligations, or purposes unrelated to Homeowners' project.

15. On or about December 1, 2015, Homeowners filed a Statement of Complaint with the Department.

16. On May 5, 2016, Homeowners reluctantly signed a private Settlement Agreement and Mutual Release with Respondents, agreeing to accept reimbursement of only \$12,000 of their \$14,000 down payment in return for releasing Respondents from all claims.

17. However, Respondents breached the Settlement Agreement by failing to pay Homeowners the last \$3,500 of the settlement amount.

18. On March 21, 2017, Homeowners obtained a money judgment against Respondent ConservaBuilders Co. in the 52-1 District Court in Novi, Michigan, for \$5,838.45 in case number 16-C06146-GC. A copy of the judgment marked Exhibit 3, is attached and incorporated.

19. Respondent ConservaBuilders Co. failed to pay Homeowners \$5,838.45, as ordered by the judgment.

COUNT I

Respondents' conduct, as described above, evidences fraud, deceit, or dishonesty in practicing an occupation, in violation of MCL 339.604(b).

COUNT II

Respondents' conduct, as described above, demonstrates a lack of good moral character, in violation of MCL 339.604(d).

COUNT III

Respondents' conduct, as described above, evidences a failure to put all agreements and changes to agreements between a builder and the customer in writing and to provide the customer with copies signed by all parties, contrary to Mich Admin Code, R 338.1533(1), in violation of MCL 339.604(h).

COUNT IV

Respondents' conduct, as described above, evidences abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee, in violation of MCL 339.2411(2)(a).

COUNT V

Respondents' conduct, as described above, evidences diversion of funds received for completion of a specific construction project for any other construction project, operation, obligation, or purposes, in violation of MCL 339.2411(2)(a).

COUNT VI

Respondents' conduct, as described above, evidences a failure to account for or remit money coming into the person's possession that belongs to others, in violation of MCL 339.2411(2)(c).

COUNT VII

Respondents' conduct, as described above, evidences failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement, in violation of MCL 339.2411(2)(h).


COUNT VIII

Respondents' conduct, as described above, evidences a failure to satisfy a judgment or lien, contrary to MCL 339.2411(2)(l).

The Formal Complaint previously executed against Respondents on October 26, 2017, is WITHDRAWN and replaced in full by this First Superseding Formal Complaint.

RESPONDENTS ARE NOTIFIED that, pursuant to MCL 339.508(2), Respondents have 15 days from the date of receipt of this Complaint to notify the Department 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 the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI 48909. If Respondents fail to notify the Department of their decision within 15 days, the Department shall proceed to an administrative hearing.

Date: 3-16, 2018


Cheryl Wykoff Pezon, Acting Director
Bureau of Professional Licensing

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