

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

JAMES ALAN FOGUTH  
License No. 21-01-210161

Complaint No. 21-17-332678

CONSENT ORDER AND STIPULATION

CONSENT ORDER

A formal complaint was filed on November 21, 2017, charging James Alan Foguth (Respondent) with having violated sections 604(b), (c), (d), and (h), 2404a, 2409, and 2411(2)(a) of the Occupational Code, MCL 339.101 *et seq.*, and Mich Admin Code, R 338.1551(2).

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 604(b), (c), (d), and (h), 2404a, 2409, and 2411(2)(a) of the Occupational Code, and Mich Admin Code, R 338.1551(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 \$4,000 to be paid by check, money order, or cashier's check made payable to the State of Michigan (with complaint number 21-17-332678 clearly indicated on the check or money order), and shall be payable within 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.

Respondent is jointly and severally liable for payment of the fine with True Value Builders LLC (complaint number 21-17-332677). If the fine becomes six months overdue, it will be referred to the Department of Treasury for collection action against Respondent.

Respondent shall be responsible for all costs and expenses incurred in complying with the terms and conditions of this consent 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.

- a. Respondent is currently subject to the terms of a Final Order entered by the Board of Residential Builders and Maintenance and Alteration Contractors on December 12, 2017. This Consent Order does not supersede the Board's December 12, 2017 Final Order, and the December 12, 2017 Order remains in full force and effect.

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 May 15, 2018

MICHIGAN BOARD OF RESIDENTIAL  
BUILDERS AND ALTERATION AND  
MAINTENANCE CONTRACTORS

By   
Chairperson, Sidney Browne

Acting

## STIPULATION

The parties stipulate as follows:

1. The facts alleged in the complaint are true and constitute a violation of the Occupational Code.
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, 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, MCL 15.231 *et seq.*
5. The Board may enter the above Consent Order, supported by Board conferee Sidney Browne. Mr. Browne 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. Browne and the parties considered the following factors in reaching this agreement:

- A. Respondent desires to resolve this case without the time and expense of an administrative hearing.
- B. Due to Respondent's pending bankruptcy action, the Bureau is not pursuing restitution for the complainants.
- C. In a prior disciplinary action, Respondent permanently surrendered his residential builder license.

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:

M. Catherine Waskiewicz  
M. Catherine Waskiewicz (P73340)  
Assistant Attorney General  
Attorney for Complainant  
Dated: 3-19-18

James Alan Foguth  
James Alan Foguth  
Respondent  
Dated: 3-16-18

Paul G. Van Gessel  
Paul G. Van Gessel (P33934)  
Attorney for Respondent  
Dated: 3-16-18

Bureau of Professional Licensing  
Approved by:

Cheryl Wykoff Pezon  
Cheryl Wykoff Pezon, Acting Director

3/22/18  
Date

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
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FORMAL COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General M. Catherine Waskiewicz, on behalf of Complainant Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, files this Formal Complaint against Respondent James Alan Foguth, 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. At all times relevant to this Complaint, Respondent was licensed as a residential builder pursuant to the Code and listed as the qualifying officer for True Value Builders LLC, a licensed residential builder company. True Value Builders LLC has a related case in file number 21-17-332677.
3. Respondent and True Value Builders LLC have pending disciplinary actions in file numbers 21-17-332404 and 21-17-332403, and their licenses are currently summarily suspended.

4. Section 604(b) of the Code requires the Board to penalize a licensee for practicing fraud, deceit, or dishonesty in practicing an occupation.

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

6. Section 604(d) of the Code requires the Board to penalize a licensee for demonstrating a lack of good moral character.

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

8. Section 2404a of the Code requires a licensee to include information relating to his or her individual license and to any license issued to him or her as a qualifying officer of another entity in the contract.

9. Section 2405(1) of the Code provides that a qualifying officer is responsible for exercising the supervision or control of the building or construction operations necessary to secure full compliance with Article 24 and the rules promulgated thereunder.

10. Section 2409 requires a licensee to report a change of address to the Department within 30 days after the change occurs.

11. Section 2411(2)(a) of the Code requires the Board to penalize a licensee for abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

12. Mich Admin Code, R 338.1551(2) requires a licensee to reply to the Department within 15 days from receipt of a complaint and confirm or deny the justification of the complaint.

13. Section 514 of the Code authorizes the Board to assess penalties against licensees under section 602 of the Code based on an administrative law hearings examiner's hearing report.

### FACTUAL ALLEGATIONS

14. On or about December 18, 2015, Respondent, on behalf of True Value Builders LLC, entered into a contract with Brent and Christine ] to replace the roof on their home in Holland, Michigan for \$13,200.

15. On the same date, Mr. and Mrs. paid a deposit of \$6,200 to True Value Builders LLC.

16. The contract lists a different address for True Value Builders LLC than its address of record with the Department and does not contain any license numbers.

17. On or about January 29, 2016, True Value Builders LLC's employee informed Mr. and Mrs. that their contract was being canceled.

18. Despite numerous attempts to contact Respondent, the contracted work was never performed, and their deposit was not refunded.

19. On or about July 10, 2017, the Department notified Respondent that Mr. and Mrs. had filed a complaint based on the aforementioned conduct. Respondent failed to respond to the notice.

COUNT I

20. Respondent's conduct as described above constitutes fraud, deceit, or dishonesty in practicing an occupation in violation of section 604(b) of the Code.

COUNT II

21. Respondent's conduct as described above constitutes a lack of good moral character in violation of section 604(d) of the Code.

COUNT III

22. Respondent's conduct as described above constitutes a failure to include license information in a contract, contrary to section 2404a of the Code, in violation of section 604(h) of the Code.

COUNT IV

23. Respondent's conduct as described above constitutes a failure to report a change of address to the Department within 30 days after the change occurs, contrary to section 2409 of the Code, in violation of section 604(h) of the Code.

COUNT V

24. Respondent's conduct as described above constitutes abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee, contrary to section 2411(2)(a) of the Code, in violation of section 604(h) of the Code.



COUNT VI

25. Respondent's conduct as described above constitutes a failure to reply to the Department within 15 days from receipt of a complaint, contrary to Mich Admin Code, R 338.1551(2), in violation of sections 604(c) and (h) of the Code.

THEREFORE, Complainant Department of Licensing and Regulatory Affairs hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, the Occupational Code, MCL 339.101 *et seq.*, and the associated administrative rules 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

*M. Catherine Waskiewicz*

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M. Catherine Waskiewicz (P73840)  
Assistant Attorney General  
Licensing & Regulation Division  
525 West Ottawa, 3<sup>rd</sup> Floor, Williams Bldg.  
P.O. Box 30758  
Lansing, MI 48909  
(517) 373-1146

Dated: November 21, 2017