

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

JOSEPH CHESTER YAHNER,
License No. 21-01-124413

Complaint No. 21-17-331820

and

YAHNER CONSTRUCTION, INC.
License No. 21-02-207505

Complaint No. 21-17-331818

Respondents.

CONSENT ORDER AND STIPULATION

CONSENT ORDER

Formal Complaints (numbers 21-17-331820 and 21-17-331818) were filed on August 25, 2017 charging Joseph Chester Yahner and Yahner Construction, Inc. (Respondents) with having violated sections 604(c), (e), (g) and 2411(2)(b) of the Occupational Code, as amended, MCL 339.101 *et seq.*; Mich Admin Code, R 338.1533(1) and (2).

The parties have stipulated that the Board may enter this consent order and that the facts alleged in the Formal Complaints are true and constitute a violation of sections 604(c), (e), (g) and 2411(2)(b) of the Occupational Code and Mich Admin Code, R 338.1533(1) and (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 complaints.

Accordingly, for these violations, IT IS ORDERED:

Respondents are placed on PROBATION for a minimum period of one day, not to exceed six months, commencing on the effective date of this order.

Respondents shall be automatically discharged from probation upon the Department's receipt of satisfactory written evidence of Respondents' successful compliance with the terms and conditions as provided below, provided compliance occurs within six months. If Respondents fail to complete any term or condition of probation as set forth in this order within six months of the effective date of this order, Respondents will be in violation of section 604(k) of the Occupational Code.

The terms and conditions of the probation are as follows:

- A. CONTINUING EDUCATION CREDITS. Respondent Joseph Yahner shall successfully complete 6 hours of continuing education credits in the area of Contracts, Liabilities, and Risk Management; 6 hours of continuing education credits in the area of Business Management; and 6 hours of continuing education credits in the area of Design and Building Science, which shall be completed within six months of the effective date of this order. These credit hours shall not count toward the number of credit hours required for license renewal. Respondent Joseph Yahner must seek and obtain advance approval of the continuing education courses from the Chairperson of the Board or the Chairperson's designee. Respondent Joseph Yahner shall mail requests for approval of a course and proof of successful completion of a course to the Department at the address set forth below.

Any violation of the Occupational Code by Respondents during the period of probation shall be deemed a violation of probation and constitute grounds for further disciplinary action.

Respondents are FINED FOUR THOUSAND AND 00/100 DOLLARS (\$4,000.00) to be paid by check, money order or cashier's check made payable to the

State of Michigan (with complaint numbers 21-17-331820 and 21-17-331818 clearly indicated on the check or money order), and shall be payable within one hundred twenty (120) days of the effective date of this order. Respondents are jointly and severally liable for paying the fine. The total fine owed on complaint numbers 21-17-331820 and 21-17-331818 is \$4,000.00. The timely payment of the fine shall be Respondents' responsibility. If Respondents fail to timely pay the fine, their licenses shall be suspended. Respondents shall mail the fine to: Sanction Monitoring, Bureau of Professional Licensing, Legal Affairs Division – Compliance Section, Department of Licensing and Regulatory Affairs, P.O. Box 30189, Lansing, Michigan 48909.

Respondents 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, Legal Affairs Division – Compliance Section, P.O. Box 30670, Lansing, Michigan 48909.

If Respondents petition for reinstatement of their licenses, the petition shall be in accordance with section 411(5) of the Occupational Code. Under this provision, Respondents shall file an application on a form provided by the department, pay the application processing fee, and file a petition to the department and the appropriate board stating reasons for reinstatement and including evidence that the person can and is likely to serve the public in the regulated activity with competence and in conformance with all other requirements prescribed by law, rule, or an order of the department or board.

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

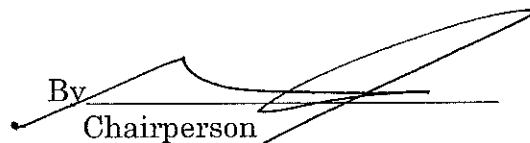
Respondents shall be responsible for the timely compliance with the terms of this consent order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this order.

If Respondents violate any term or condition set forth in this order, Respondents will be in violation of section 604(k) of the Occupational Code.

This order shall be effective thirty (30) 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. The facts alleged in the Formal Complaints (numbers 21-17-331820 and 21-17-331818) 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. Respondents understand and intend that, by signing this stipulation, they are 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 complaints 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 Sidney Browne, Jr.

6. Mr. Browne and the parties considered the following factors in reaching this agreement:

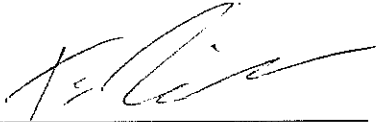
A. Respondents indicated that monies sent to Smith Lumber for purchases made for the Sielawa home were inadvertently credited to other outstanding debts owed by Respondents to Smith Lumber. Respondents asserted that they failed to ensure that the Sielawas' money was credited to the correct invoices.

B. Respondents assert that a mistake in the building plans caused some of the delay in the project. Respondents recognized that they had the responsibility to ensure the accuracy of the plans produced by the plan company hired by Respondents.

C. Respondent Joseph Yahner stated that he had a friendship with the Sielawas and therefore felt comfortable relying on verbal assurances instead of having the contract and written change orders constitute the full agreement and dictate the scope of the project. He admitted that under this arrangement he failed his obligation as a residential builder to protect both the homeowners and himself with complete written agreements.

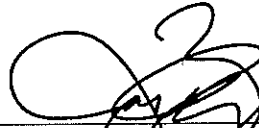
By signing this stipulation, the parties confirm that they have read, understand and agree with the terms of the consent order.

AGREED TO BY:



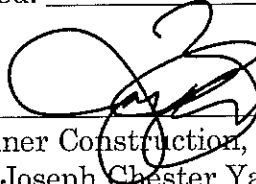
Timothy C. Erickson (P72071)
Assistant Attorney General
Attorney for Complainant
Dated: 9/25/2017

AGREED TO BY:



Joseph Chester Yahner
Respondent

Dated: 9/21/2017



Yahner Construction, Inc.
By: Joseph Chester Yahner
Respondent
Dated: 9/21/2017

Bureau of Professional Licensing
Approved by:



Kim Gaedeke, Director

09/29/2017
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

JOSEPH CHESTER YAHNER
License No. 21-01-124413

Complaint No. 21-17-331820

Respondent.

FORMAL COMPLAINT

NOW COMES Attorney General Bill Schuette, through Timothy C. Erickson, Assistant Attorney General, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Complainant, pursuant to the Occupational Code, as amended, MCL 339.101 *et seq*, and its rules promulgated thereunder, and files this Formal Complaint against Joseph Chester Yahner, Respondent, upon information and belief alleges 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 339.2401 *et seq*.
2. Section 604(c) of the Code subjects a licensee to sanction for violating a rule of conduct of an occupation.
3. Section 604(e) of the Code subjects a licensee to sanction who commits an act of gross negligence.

4. Section 604(g) of the Code subjects a licensee to sanction who demonstrates incompetence.

5. Section 2411(2)(b) of the Code subjects a licensee to sanction for “[d]iversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of a construction project or operation, and the funds or property application or use for any other construction project or operation, obligation, or purposes.”

6. Mich Admin Code, R 338.1533(1) requires “[a]ll agreements and changes to the agreements between a builder, or contractor, and the customer to be in writing and signed by the parties. Copies of all agreements and changes to agreements must be in writing and provided to the customer.”

7. Mich Admin Code, R 338.1533(2) requires that the builder or contractor “make certain that the written agreements clearly state the terms of the transaction, including specifications, and when construction is involved, both plans and specifications, including cost, the type and amount of work to be done, and the type and quality of materials to be used.”

8. Section 514 of the Code authorizes the Board to sanction licensees based on an administrative law hearing examiner’s hearing report.

9. Section 602 of the Code requires the Board to sanction licensees who have violated the Code.

FACTUAL ALLEGATIONS

10. On or about June 11, 2016 Respondent contracted with Paul and Cindy (“the owners”) to build a two-story home based on building plans from HDA, Inc. Respondent agreed to a contract price of \$90,000.00.

11. The contract stated that “[t]he owner shall provide some labor and material during the course of the project.” The contract did not include the amount of work to be done by the owners, nor did it include the type and quality of materials the owners would provide.

12. The contract included building plans with handwritten modifications on the plans. The contract also included a typewritten addendum explaining the agreed-upon modifications to the standard plans.

13. Respondent agreed to commence work on or before July 1, 2016 and substantially complete the work on or before March 1, 2017.

14. Respondent agreed to request, and the owners agreed to pay, periodic draws with the final \$8,000.00 coming due after the completion of the punch list and final inspection.

15. The owners made the following payments to Respondent:

- a. \$2,000.00 on May 24, 2016;
- b. \$495.00 on June 9, 2016;
- c. \$15,000.00 on June 11, 2016;
- d. \$9,000.00 on July 29, 2016;
- e. \$20,000.00 on August 12, 2016; and

f. \$27,000.00 on September 28, 2016.

g. In total, the owners paid \$73,495.00.

16. Some of these draws were to pay for lumber from Smith Lumber, but Respondent did not pay Smith Lumber all the monies owed. The monies were diverted elsewhere.

17. Some of these draws were to pay for excavation and other work performed by Campbell Excavating, but Respondent did not pay Campbell Excavating all the monies owed. The monies were diverted elsewhere.

18. By November 2016, Respondent had built a portion of the house, but Respondent had not, among other things, finished framing the second floor, installing stairs to the second floor, or installing a roof.

19. The owners tried to help Respondent, but because of the state of the project, their assistance was limited.

20. Respondent claimed the delays in construction were due, in part, to change orders by the owners, but Respondent has failed to produce written change orders or other documentation showing these changes.

21. On or about November 19, 2016, the owners decided to hire another builder to complete the project.

22. On or about January 16, 2017, Respondent filed for bankruptcy.

COUNT I

23. Respondent's conduct, as described above, is contrary to Mich Admin Code, R 338.1533(1) in violation of section 604(c) of the Code.

COUNT II

24. Respondent's conduct, as described above, is contrary to Mich Admin Code R, 338.1533(2) in violation of section 604(c) of the Code.

COUNT III

25. Respondent's conduct, as described above, constitutes gross negligence in violation of Section 604(e) of the Code.

COUNT IV

26. Respondent's conduct, as described above, constitutes incompetence in violation of section 604(g) of the Code.

COUNT V

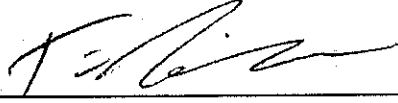
27. Respondent's conduct, as described above, constitutes diversion of funds or property received for prosecution or completion of a specific construction project or operation, in violation of section 2411(2)(b) of the Code.

WHEREFORE, Complainant, Department of Licensing and Regulatory Affairs, hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, 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.

Respectfully submitted,

BILL SCHUETTE
Attorney General

By



Timothy C. Erickson (P72071)
Assistant Attorney General
Licensing & Regulation Division
P.O. Box 30758
Lansing, MI 48909
Phone (517) 373-1146; Fax (517) 241-1997

Dated: August 25, 2017

LF: 2017-0188607-B /Yahner Construction Inc., 331818 /Complaint – Formal – 2017-08-25