

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

PAUL KIRKWOOD,
License No. 21-05-213279

Complaint No. 21-16-331127

Respondent.

CONSENT ORDER AND STIPULATION

CONSENT ORDER

A formal complaint was filed on June 14, 2017 charging Paul Kirkwood (Respondent) with having violated sections 601(1), 604(b), (d), (h), 2404a, 2411(2)(d), (e), and (l) of the Occupational Code, as amended, MCL 339.101 *et seq.*

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 601(1) and 2411(2)(e) of the Occupational 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 \$2,000.00 to be paid by check, money order or cashier's check made payable to the State of Michigan (with complaint number 21-16-331127 clearly indicated on the check or money order), and shall be payable within sixty (60) days of the effective date of this order. If Respondent fails to timely pay fine, his license shall be suspended. 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, III, IV, V and VII of the complaint, alleging a violation of sections 604(b), 604(d), 2404a, and 2411(2)(l) of the Occupational Code, are DISMISSED.

If Respondent petitions for reinstatement of his license, the petition shall be in accordance with section 411(5) of the Occupational Code. Under this provision, Respondent 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.

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 (30) days from the date signed by the Chairperson or the Chairperson's designee, as set forth below.

Signed on 9/12/17

MICHIGAN BOARD OF RESIDENTIAL
BUILDERS AND MAINTENANCE AND
ALTERATION CONTRACTORS

By _____
Chairperson

STIPULATION

The parties stipulate as follows:

1. The facts alleged in the 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, 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, Sidney Browne, Jr.

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

A. Respondent indicated that he inadvertently failed to provide the Mastershield gutter guards to be installed on the homeowner's home, but Respondent asserted that other gutter guards were, in fact, installed, but they were not Mastershield gutter guards.

B. Respondent said that he will file pleadings in the District Court in an attempt to set aside the default judgment entered against him. Respondent claimed that the homeowner should have filed the civil claim against the corporation 4 Daughters Gutters, Inc.

C. Respondent represented that he believed Justin Johnson had a license under Article 24 of the Occupational Code, but acknowledged that he did not take any steps to verify Mr. Johnson's licensure.

D. Respondent acknowledged that the village of Beverly Hills required a building permit for the installation of gutters. Respondent also indicated that he believed Mr. Johnson pulled the required building permit, but accepts that Mr. Johnson failed to do so.

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

AGREED TO BY:

for Timothy C. Erickson (F72071)
Assistant Attorney General
Attorney for Complainant
Dated: 8/2/17

Bureau of Professional Licensing
Approved by:

Kim Gaedeke
Kim Gaedeke, Director

AGREED TO BY:

Paul Kirkwood
Paul Kirkwood
Respondent

Dated: 28 JUL 17

Date

08/07/2017

LF: 2017-0183317-B/Kirkwood, Paul, 381127 (Res Bldg)/Consent order - 2017-07-06

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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In the Matter of

PAUL KIRKWOOD,
License No. 21-05-213279,

Complaint No. 21-16-331127

Respondent.

FORMAL COMPLAINT

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, files this Formal Complaint against Paul Kirkwood, 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. From September 21, 2016, and at all times relevant to this complaint, Respondent was licensed as a Residential Builder Salesperson for employer Empire Today, LLC pursuant to Article 24 of the Occupational Code.
3. Respondent has never been licensed as a residential builder and/or maintenance and alteration contractor pursuant to Article 24 of the Code.

4. Section 601(1) of the Code prohibits an individual from engaging in or attempting to engage in the practice of an occupation without a license.

5. Section 604(b) of the Code subjects a licensee to sanction for “fraud, deceit, or dishonesty in practicing an occupation.”

6. Section 604(d) of the Code subjects a licensee to sanction who demonstrates a lack of good moral character, meaning “the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner,” as defined by MCL 338.41.

7. Section 604(h) of the Code subjects a licensee to sanction who “[v]iolates a provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.”

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

9. Section 2411(2)(d) of the Code subjects a licensee to sanction for “[a] willful departure from or disregard of plans or specifications in a material respect . . . without the consent of the owner”

10. Section 2411(2)(e) of the Code subjects a licensee to sanction for “[a] willful violation of the building laws of this state or of a political subdivision of this state.”

11. Section 2411(2)(l) of the Code subjects a licensee to sanction for “failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.”

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

13. Section 602 of the Code authorizes the Board to sanction licensees who have violated the Code.

FACTUAL ALLEGATIONS

14. Respondent is the owner and resident agent of 4 Daughters Gutters, Inc., a Michigan profit corporation.

15. On or about November 20, 2015, Respondent contracted with Nancy Craig, using the name Four Daughters Gutters, to install new gutters and Mastershield gutter guards on her home for the contract price of \$4,155.00. Ms. Craig paid Respondent \$2,077.50 on November 20, 2015.

16. Respondent and Ms. Craig agreed that Ms. Craig would inform Respondent when she had completed painting her house in the spring or summer of 2016 so that Respondent could then complete the gutter work.

17. On or about August 15, 2016, Respondent and Justin Johnson installed the gutters. Respondent asked that Ms. Craig make the final check for \$2,077.50 to him personally. Ms. Craig paid Respondent \$2,077.50 on August 15, 2016.

18. Justin Johnson is not licensed as a residential builder, nor as a maintenance and alteration contractor, nor as a residential builder salesperson pursuant to Article 24 of the Code.

19. Respondent failed to obtain a building permit for the work he performed.

20. Respondent failed to install Mastershield gutter guards.

21. Between August and October 2016, Ms. Craig contacted Respondent via telephone calls and text messages about the Mastershield gutter guards. He eventually stopped responding to Ms. Craig's attempts to contact him.

22. Ms. Craig filed a small claims civil lawsuit against Respondent.

23. On December 20, 2016, the 46th District Court entered a default judgment against Respondent in the sum of \$4,235.00. Respondent has not satisfied that judgment.

COUNT I

24. Respondent's conduct, as described, above constitutes engaging in or attempting to engage in the practice of an occupation without a license in violation of section 601(1) of the Code.

COUNT II

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

COUNT III

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

COUNT IV

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

COUNT V

28. Respondent's conduct, as described above, constitutes a deviation from the plans without consent of the owner, in violation of section 2411(2)(d) of the Code.

COUNT VI

29. Respondent's conduct, as described above, constitutes a willful violation of the building laws of this state or of a political subdivision of this state, in violation of section 2411(2)(e) of the Code.

COUNT VII

30. Respondent's conduct, as described above, constitutes failing to satisfy a judgment, in violation of section 2411(2)(l) of the Code.

THEREFORE, 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: June 14, 2017