

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

MARK S. SMITH
License Number: 21-01-147648

File Number: 21-15-327554

CONSENT ORDER

The Department of Licensing and Regulatory Affairs (Department) executed a Formal Complaint (Complaint) on January 8, 2015, charging Mark S. Smith (Respondent) with violating section 604(c) of the Occupational Code, 1980 PA 299, as amended; MCL 339.101 et seq.

Respondent has admitted that the facts alleged in the Complaint are true and constitute violations of the Occupational Code.

The Michigan Board of Residential Builders and Maintenance and Alteration Contractors (Board) has reviewed this Consent Order and Stipulation (Order) and agrees that the public interest is best served by resolution of the outstanding Complaint.

Therefore, IT IS FOUND that the facts alleged in the Complaint are true and constitute violation(s) of section(s) 604(c) of the Occupational Code, supra.

Accordingly, IT IS ORDERED that for the cited violation(s) of the Occupational Code, Respondent is FINED \$500.00 to be paid to the State of Michigan within 90 days of the effective date of this Order.

IT IS FURTHER ORDERED that the fine shall be mailed to the **Department of Licensing and Regulatory Affairs, Enforcement Division, Sanction Monitoring, P.O. Box 30189, 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 number **21-15-327554**.

IT IS FURTHER ORDERED that failure to comply with the terms of this Order shall result in a SUSPENSION of all licenses or registrations held by Respondent and in the denial of any license or registration renewal until compliance with this Order.

IT IS FURTHER ORDERED that this Order shall be effective 30 days from the date signed by the Board, as set forth below.

**MICHIGAN BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE AND ALTERATION CONTRACTORS**

By: _____
Chairperson

Dated: 6-14-16

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STIPULATION

1. The facts alleged in the Complaint are true and constitute violation(s) of section 604(c) of the Occupational Code, supra.

2. Respondent understands and intends that by signing this Stipulation Respondent is waiving the right, pursuant to the Occupational Code, the rules promulgated thereunder, and the Administrative Procedures Act, 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 Respondent is waiving the right to appear with an attorney and such witnesses as Respondent may desire to present a defense to the charges.

3. This matter 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.

4. Factors taken into consideration in the formulation of this Order are as follows:

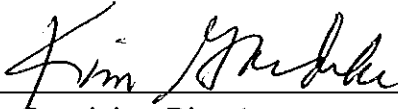
Respondent contacted the Homeowner several times to enter the property to make the repairs. However, the Homeowner did not allow Respondent on the property.

Homeowner no longer owns the property.

5. This Order is approved as to form and substance by Respondent and the Department and may be entered as the final order of the Board in this matter.

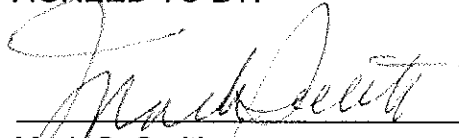
6. This proposal is conditioned upon acceptance by the Board. Respondent and the Department expressly reserve the right to further proceedings should this Order be rejected.

AGREED TO BY:



Kim Gaedeke, Director
Bureau of Professional Licensing
Department of Licensing and
Regulatory Affairs

AGREED TO BY:



Mark S. Smith
Respondent

Dated:

04/04/2016

Dated:

3/24/16

This is the final page of a Consent Order and Stipulation in the matter of Mark S. Smith, File Number 21-15-327554, before the Michigan Board of Residential Builders and Maintenance and Alteration Contractors, consisting of four pages, this page included.

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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In the Matter of

MARK S. SMITH

License Number: 21-01-147648

File Number: 21-15-327554

FORMAL COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs (Complainant) by Kim Gaedeke, Director, Bureau of Professional Licensing, files this Complaint against Mark S. Smith (Respondent) as follows:

1. The Michigan Board of Residential Builders and Maintenance and Altercation Contractors (Board) is an administrative agency established by the Occupational Code, 1980 PA 299, as amended; MCL 339.101-605 et seq. Pursuant to section 602 of the Occupational Code, supra, the Board is empowered to penalize licensees for violations of the Occupational Code.

2. Respondent is licensed as a residential builder in the state of Michigan.

3. For historical information, the following actions occurred:

a) On May 23, 2003, Complainant executed a Formal Complaint against Respondent based on allegations of construction defects. On December 12, 2003, in resolution of the matter,

a Stipulation was executed against Respondent that required the payment of a \$1,000.00 fine and \$20,000.00 restitution payment to the homeowner. On March 15, 2004, the Board accepted the Stipulation as a final order.

b) On November 12, 2015, Complainant executed a Formal Complaint against Respondent based on allegations of construction defects.

4. On May 12, 2015, Respondent entered into a contract with Jonathan J. Martin (Homeowner) to perform exterior work that included, in part, replacing the roof of the home and garage. A copy of the contract, marked Exhibit A, is attached and incorporated.

5. On July 17, 2015; Homeowner filed a Statement of Complaint with Complainant alleging Respondent rendered his home uninhabitable.

6. On October 16, 2015, the city of Detroit building inspector conducted a quality inspection of Homeowner's property and noted the following violations of the 2009 Michigan Residential Code adopted pursuant to the Stille-DeRossett-Hale single state construction act, effective March 9, 2011:

- a) House roof:
 - i. Inadequate counter flashing and flashing, in violation of R 703.8 and
 - ii. Irregular cuts on shingles, in violation of R 905;
- b) Garage roof:
 - i. Exposed decking and spacing of decking, in violation of R 903; and
 - ii. Drip edge was not continuous, in violation of R 901.

COUNT I

Respondent's conduct, as described above, evidences a failure to maintain standards of construction in accordance with the local building code, contrary to Mich Admin Code, R 338.1551(5), in violation of section 604(c) of the Occupational Code, supra.

Complainant requests that this Complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the licenses. If compliance is not shown, Complainant further requests that formal proceedings be commenced pursuant to the Occupational Code, rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq.

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Pursuant to section 508 of the Occupational Code, supra, Respondent has 15 days from the date of receipt of this Complaint to notify Complainant of Respondent's 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 Respondent's selection shall be submitted to Complainant, Kim Gaedeke, Director, Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI 48909. If Respondent fails to submit written notification within 15 days, this matter shall proceed to an administrative hearing.

Dated: 01/08/2016



Kim Gaedeke, Director
Bureau of Professional Licensing

Attachment

This is the final page of a Formal Complaint in the matter of Mark S. Smith, File Number 21-15-327554, before the Michigan Board Residential Builders and Maintenance and Altercation Contractors, consisting of four pages, this page included.

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