

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

TRUE VALUE BUILDERS LLC
License No. 21-02-210291

Complaint No. 21-17-332403

CONSENT ORDER AND STIPULATION

CONSENT ORDER

A second superseding formal complaint was filed on August 7, 2017, charging True Value Builders LLC (Respondent) with having violated sections 604(b), (c), and (h), 2404a, 2409, 2411(2)(a), (d), and (e) of the Occupational Code, MCL 339.101 *et seq.*, and Mich Admin Code, R 338.1532(1), 338.1533(1) and (2), and 338.1551(2).

Based on the second superseding formal complaint and an accompanying affidavit from Director Jon Campbell, the Department summarily suspended Respondent's residential builder license by order dated August 4, 2017.

The parties have stipulated that the Board may enter this consent order and that the facts alleged in the Second Superseding Formal Complaint are true and constitute a violation of sections 604(b), (c) and (h), 2404a, 2409, 2411(2)(a); (d), and (e) of the Occupational Code, MCL 339.101 *et seq.*, and Mich Admin Code, R 338.1532(1), 338.1533(1) and (2), and 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:

The order of summary suspension previously issued is DISSOLVED.

Respondent's license to practice as a residential builder is PERMANENTLY SURRENDERED on the effective date of this order. The license shall not be renewed, reinstated, reissued, or reactivated, limited or otherwise, at any future date.

Within eighteen months of the effective date of this order, Respondent shall pay RESTITUTION in the amount of \$4,180 to Daniel Palmeri; \$5,900 to Tom Anderson; \$1,981.92 to Helen Brockmeier; \$3,320 to Beverly and Jack Maher; and \$24,572.88 to Susan and James Levy. Respondent and James Alan Foguth (complaint no. 21-17-332404) are jointly responsible for paying the restitution. Respondent shall mail restitution to the recipients at the addresses provided to Respondent in a separate document by the Department or Office of Attorney General, Licensing and Regulation Division at the time he signed this stipulation.

Respondent shall submit satisfactory written proof of timely restitution payments to the Department by mail or other method acceptable to the Department.

Respondent shall direct any communications to the Department that are required by the terms of this order to: Sanction Monitoring Unit, Bureau of Professional Licensing, Legal Affairs Division – Compliance Section, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, Michigan 48909.

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

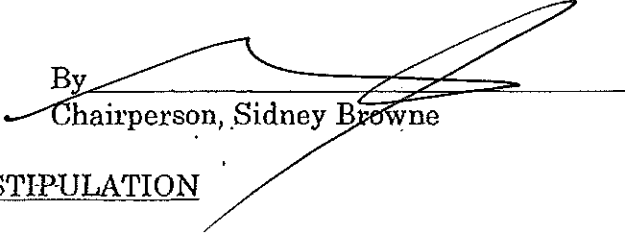
Respondent shall be responsible for the timely compliance with the terms of this consent order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this order.

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 on 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, Sidney Browne

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, it 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. 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.

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

AGREED TO BY:

M. Catherine Waskiewicz
M. Catherine Waskiewicz (P73340)
Assistant Attorney General
Attorney for Complainant
Dated: 10-9-17

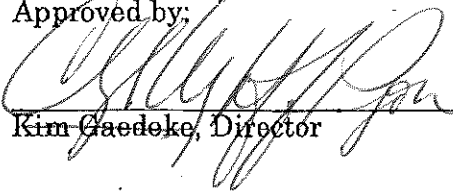
AGREED TO BY:

James Alan Foguth
James Alan Foguth
Authorized Signatory for Respondent

Dated: 10-6-17

Paul G. Van Gessel
Paul G. Van Gessel (P33934)
Attorney for Respondent
Dated: 10-6-17

Bureau of Professional Licensing
Approved by:

Acty


Kim Gaedeke, Director

10/17/17

Date

LF: 2017-0185639-B/True Value Builders, LLC, 332403/Proposed Consent Order and Stipulation - 2017-09-13

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

TRUE VALUE BUILDERS LLC
License No. 21-02-210291

Complaint No. 21-17-332403
(consolidated with 21-16-329993, 21-
17-331990, 21-17-332396)

_____ / Docket No. 17-012393

ORDER OF SUMMARY SUSPENSION

A Second Superseding Formal Complaint has been issued against Respondent under the Occupational Code, MCL 339.2401 *et seq.*, promulgated rules, and the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*

After consideration of the documentation obtained in investigating this matter and after reviewing the attached affidavit from Director Jon Campbell, the Department concludes that the public health, safety and welfare requires emergency action, as allowed by section 505(1) of the Occupational Code and section 92 of the Administrative Procedures Act.

THEREFORE, IT IS ORDERED that Respondent's license to practice as a residential builder in the state of Michigan shall be summarily suspended commencing on the date this order is served.

Under MCL 339.505(2), Respondent has the right to petition for the dissolution of this Order of Summary Suspension. This petition shall clearly state that it is a Petition for Dissolution of Summary Suspension and shall be filed with the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, P.O. Box 30670, Lansing, Michigan 48909, with a copy served upon the Department of Attorney General, Licensing & Regulation Division, P.O. Box 30758, Lansing, Michigan, 48909. Questions concerning the Order of Summary Suspension may be directed to (517) 373-1146. Upon receipt of such a petition, an administrative hearing will immediately be scheduled before an administrative law judge, who shall dissolve the Order of Summary Suspension unless sufficient evidence is produced to support a finding that the public health, safety, or welfare requires emergency action and a continuation of the suspension order.

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS, BUREAU OF
PROFESSIONAL LICENSING

By 
Kim Gaedeke, Director
Bureau of Professional Licensing

Dated: 8-4, 2017

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF RESIDENTIAL BUILDERS AND MAINTENANCE AND
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/ Docket No. 17-012393

SECOND SUPERSEDING 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 Second Superseding Formal Complaint against Respondent True Value Builders LLC, 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 339.2401 *et seq.*
2. At all times relevant to this Complaint, Respondent was licensed as a residential builder pursuant to the Code, with James Alan Foguth listed as its qualifying officer.
3. 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.

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

5. 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.

6. Section 2411(2)(d) of the Code requires the Board to penalize a licensee for a willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the owner or an authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications.

7. Section 2411(2)(e) of the Code requires the Board to penalize a licensee for a willful violation of the building laws of this state or of a political subdivision of this state.

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

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

10. 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 thereunder for which a penalty is not otherwise prescribed.

11. Mich Admin Code, R 338.1532(1) requires a licensee to include the name, license number, and actual business address, as shown on the license, in all advertising. The use of a telephone or post office box number alone is prohibited.

12. Mich Admin Code, R 338.1533(1) requires all 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.

13. Mich Admin Code, R 338.1533(2) requires a licensee to clearly state the terms of the transaction, including specifications, in written agreements.

14. 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.

15. After conducting an investigation, the Department may issue an order summarily suspending a license or a certificate of registration issued pursuant to Articles 8 to 25 of the Code based on an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit on information and belief, that an imminent threat to the public health, safety, and welfare exists. MCL 339.505(1).

16. 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

17. On or about October 2016 and March 2017, Respondent advertised in SaveOn and Val-Pak of West Michigan without including its license number and business address in the advertisement.

Homeowner Daniel

18. Toward the end of 2015, Mr. Foguth, on behalf of Respondent, entered into a contract with Daniel to install new windows and a patio door in his home in Kentwood, Michigan for \$7,000. The contract was not dated, failed to include the license information for Respondent and Mr. Foguth, and failed to specify the type or quality of the windows and doors to be installed.

19. The contract lists a different address for Respondent than Respondent's address of record with the Department.

20. Mr. made an initial deposit of \$3,500 to Respondent. The contract failed to specify when the remaining \$3,500 was due. Mr. Foguth also failed to initial and date the second page of the contract.

21. Per Mr. Foguth's instruction, Mr. paid the remaining \$3,500 to Respondent's subcontractor, Norm Hutchins. After Mr. Hutchins failed to properly install the windows and patio door, Respondent sent a second subcontractor, West Coast Construction, to correct the work. West Coast Construction only reinstalled a few windows because Respondent stopped paying the company. Mr. Foguth did not respond to Mr.] request that a licensed

"crew" perform the work or return to Mr. [redacted] home to properly install the windows and patio door.

22. On or about August 3, 2016, Mr. [redacted] filed a Statement of Complaint with the Department against Respondent and Mr. Foguth.

23. On or about September 24, 2016, Mr. Foguth filed a written answer to the Statement of Complaint acknowledging his responsibility for the contracted work and Mr. [redacted] initial deposit of \$3,500.

24. Mr. [redacted] received a quote in the amount of \$4,180 from West Coast Construction to correct Respondent's work and complete the job.

Homeowner Tom .

25. On or about October 1, 2015, Mr. Foguth, on behalf of Respondent, entered into a contract with Tom . [redacted] to install a new roof on his home in Grand Haven, Michigan for \$5,900.

26. The contract was not dated and failed to include the license information for Respondent and Mr. Foguth. Mr. Foguth also failed to initial and date the second page of the contract.

27. Mr. [redacted] made an initial deposit of \$2,950 to Respondent. The contract stated that the balance was due upon completion.

28. On or about October 14, 2015, Respondent applied for a permit, and described the work as "tear off roof, replace w/metal." The contract, however, did not include the removal of the roof.

29. On or about November 7, 2015, Respondent created an invoice labeled "change work order" that added \$2,100 for the removal and disposal of shingles due prior to completion. The invoice is not signed by either party.

30. The contract included a timeframe to complete the project of approximately 21 days. Respondent failed to start the project until November 10, 2015, and Respondent stopped work on November 11, 2015.

31. The contract, permit application, and invoice list a different address for Respondent than Respondent's address of record with the Department.

32. On November 17, 2015, the Grand Haven Township Building Inspector emailed Mr. Foguth to explain his findings from the final inspection of the contracted work. He informed Mr. Foguth that there were multiple violations of the Michigan Residential Code for failing to use the manufacturer's specifications to install the roof and for needing to remove the roof underlayment from the ridge opening.

33. On the same date, Mr. Foguth replied to the inspector's email as follows: "Thanks Scott. I will have Chris fix the issues and notify when it is done. Have a great Thanksgiving! Jim."

34. On or about December 3, 2015, Mr. [redacted] filed a Statement of Complaint with the Department against Mr. Foguth and Respondent.

35. On or about January 11, 2016, Mr. Foguth filed a written answer to the Statement of Complaint acknowledging his contract with Mr. [redacted] and the invoice for \$2,100 to remove and dispose of the shingles. He provided a copy of the

invoice to the Department showing Mr. _____ had made the initial deposit of \$2,950 to Respondent.

36. On or about May 4, 2016, Mr. _____ paid \$8,835 to another contractor to correct Respondent's work.

Homeowner Helen

37. On or about August 19, 2015, Mr. Foguth, on behalf of Respondent (d/b/a The Window Source of West Michigan), entered into a contract with Helen _____ to replace the exterior windows and two doors on her home in Holland, Michigan for \$9,747. In accordance with the terms of the contract, Ms. _____ made an initial payment of \$5,000 to Respondent on the same date. The contract stated that the balance was due upon completion.

38. The license information for Mr. Foguth and Respondent was not included in the contract.

39. The contract lists a different address for Respondent than its address of record with the Department.

40. Respondent commenced the work in October 2015 and has not returned to the project since April 2016. Respondent failed to trim the windows or complete the installation of the doors and left debris on the property.

41. On or about December 31, 2015, Ms. _____ requested Respondent's license number from Mr. Foguth, and he provided an incorrect license number.

42. On April 24, 2017, the Department notified Respondent that Ms. [REDACTED] had filed a complaint based on the aforementioned conduct.

Respondent failed to respond to the Department's notice.

Homeowners Beverly and Jack

43. On or about August 17, 2016, Mr. Foguth, on behalf of Respondent, entered into a contract with Beverly and Jack [REDACTED] to construct a sunroom at their home in Rockford, Michigan for \$28,120. In accordance with the terms of the contract, Mr. [REDACTED] made an initial payment of \$3,120 to Respondent on the same date. The balance was due upon completion.

44. The license information for Mr. Foguth and Respondent was not included in the contract.

45. The contract lists a different address for Respondent than its address of record with the Department.

46. In September 2016, the roof in the sunroom began leaking, causing ongoing damage to the room.

47. On or about November 20, 2016, Respondent obtained \$25,000 for the project through Mr. and Mrs. [REDACTED] loan with Green Sky Credit without the homeowners' authorization and before the project was completed. Green Sky Credit eventually released Mr. and Mrs. [REDACTED] from the loan.

48. On or about January 6, 2017, Mr. and Mrs. [REDACTED] filed a complaint with the Better Business Bureau, indicating Mr. Foguth had stopped responding to their attempts to communicate with him and had not replaced a ripped screen, fixed

the caulking, properly installed the gutters, or repaired the leaking roof to the sunroom. He also left debris on their property.

49. Mr. Foguth agreed to reimburse Mr. and Mrs. [redacted] for purchases they made related to the project, including a ceiling fan and carpet cleaning. On or about January 12, 2017, Mr. Foguth wrote a check to Mr. and Mrs. [redacted] in the amount of \$200, but Respondent's bank informed them there were insufficient funds.

50. On or about January 27, 2017, Mr. Foguth made false statements to the Better Business Bureau in response to Mr. and Mrs. [redacted] complaint.

51. Respondent also failed to pull permits for the project. On or about February 3 and 16, 2017, the Cannon Township Building Department notified Mr. Foguth that he was required to pull permits.

52. On April 24, 2017, the Department notified Respondent that Mr. and Mrs. [redacted] had filed a complaint based on the aforementioned conduct. Respondent failed to respond to the Department's notice.

Homeowners Susan and James

53. On or about August 23, 2016, Brian Perin, on behalf of Respondent, entered into a contract with Susan and James [redacted] to install a new roof, windows, and patio door and remodel the interior of their home in Montague, Michigan for \$39,550.

54. The license information for Mr. Perin and Respondent was not included in the contract.

55. The contract lists a different address for Respondent than its address of record with the Department.

56. On or about August 25, 2016, Respondent applied for and obtained an installment loan with GreenSky in Mrs. name without her authorization. On or about August 30, 2016, Respondent charged \$20,000 to Mrs. GreenSky account without her authorization.

57. On or about October 5, 2016, Brian Perin, on behalf of Respondent, entered into a change order with Mr. and Mrs. for a total contract price of \$54,696.25.

58. In accordance with the terms of the contract, Mrs. Levy made an initial deposit of \$27,000 to Respondent on or about October 5, 2016. The balance was due upon completion.

59. Respondent did not commence work on the roof and windows until about November 16, 2016. After removing the roof, Respondent failed to properly cover the roof while it installed the new roof, which resulted in the roof leaking.

60. Respondent did not commence work on the interior remodeling until about December 8, 2016.

61. On or about December 16 and 19, 2016, Mr. Foguth asked Mrs. to hire a plumber and an electrician to perform work that was included in the contract.

62. On December 21, 2016, Mr. Foguth, on behalf of Respondent, signed a document indicating that Mr. and Mrs. would pay electrical and plumbing contractors directly, which would be deducted from the balance due upon

completion. On or about January 27, 2017 and February 1, 2017, Mrs. made payments to Scheid Plumbing, Heating & Cooling Inc. in the amount of \$3,343.12 and Belasco Electric Co., Inc. in the amount of \$2,422.11.

63. On or about January 10, 2017, Respondent entered into a change order with Mr. and Mrs to install oak interior window trim for \$2,035 and paint exterior window trim for \$3,303.75. On the same date, Mrs: made a payment to Respondent in the amount of \$5,338.75 for the items in the change orders.

64. On or about January 20, 2017, Respondent abandoned the project without repairing the roof, replacing missing gutter pieces, completing the interior remodel, and replacing three windows and the patio door. Respondent also failed to trim, seal, and insulate the windows that were replaced. Respondent left the interior of the home damaged and filled with debris.

65. After Ms. continued her attempts to contact Mr. Foguth, he emailed Mrs. on February 2, 2017, threatening her with a lawsuit for slander and “criminal prosecution” if she made any attempt to contact him.

66. On or about February 13, 2017, Mr. Foguth filed a claim of lien in the amount of \$20,540 against the home, in which he falsely stated that he completed a “bathroom addition, metal roof, siding, gutters, and replacement windows.”

67. On March 8, 2017, the Department notified Respondent that Mrs. had filed a complaint based on the aforementioned conduct. Respondent failed to respond to the Department’s notice.

68. On or about April 21, 2017, the Better Business Bureau issued an arbitration decision, which required Respondent to pay \$24,572.88 to Mrs. Levy.

COUNT I

69. 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 II

70. 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 III

71. 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 IV

72. Respondent's conduct as described above constitutes a willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, contrary to section 2411(2)(d) of the Code, in violation of section 604(h) of the Code.

COUNT V

73. 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, contrary to section 2411(2)(e) of the Code, in violation of section 604(h) of the Code.

COUNT VI

74. 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 VII

75. Respondent's conduct as described above constitutes a failure to include the license number, and actual business address, as shown on the license, in all advertising, contrary to Mich Admin Code, R 338.1532(1), in violation of sections 604(c) and (h) of the Code.

COUNT VIII

76. Respondent's conduct as described above constitutes a failure to have all agreements and changes to agreements between Respondent and the customer signed by the parties, contrary to Mich Admin Code, R 338.1533(1), in violation of sections 604(c) and (h) of the Code.

COUNT IX

77. Respondent's conduct as described above constitutes a failure to clearly state the terms of the transaction in a written agreement, contrary to Mich Admin Code, R 338.1533(2), in violation of sections 604(c) and (h) of the Code.

COUNT X

78. 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.

FURTHER, Complainant requests that pending the hearing and final determination Respondent's license to work as a residential builder in the state of Michigan continue to be summarily suspended pursuant to section 92 of the Administrative Procedures Act and section 505(1) of the Occupational Code for the reason that, based upon the allegations set forth herein, to permit Respondent to continue to practice the profession constitutes a danger to the public health, safety, and welfare requiring emergency action.

FURTHER, the first superseding administrative complaint previously filed against Respondent on February 17, 2017, is hereby WITHDRAWN and replaced in full by this second superseding complaint.

Respectfully submitted,

BILL SCHUETTE
Attorney General

M. Catherine Waskiewicz

M. Catherine Waskiewicz (P73340)
Assistant Attorney General
Licensing & Regulation Division
525 West Ottawa, 3rd Floor, Williams Bldg.
P.O. Box 30758
Lansing, MI 48909
(517) 373-1146

Dated: August 3, 2017

LF: 2017-0185639-A/True Value Builders, LLC, 332403 (Res Bldr)/Second Superseding Formal Complaint -- 2017-08-03