

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF CONSTRUCTION CODES

DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS,  
BUREAU OF CONSTRUCTION CODES

Complainant,

v

BRENT PAPINEAU  
DBA: B & J CONSTRUCTION  
License No. 21-01-205695

Complaint No. 2300204  
Docket No. 23-023200

Respondent

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**FINAL ORDER**

The Michigan Board of Residential Builders and Maintenance & Alteration Contractors (“Board”), having reviewed the administrative record, considered this matter at a regularly scheduled meeting held in Lansing, Michigan on January 11, 2024, and considered the Finding of Facts and Conclusions of Law in the Hearing Report of Paul Smith, Administrative Law Judge, dated November 27, 2023.

**IT IS ORDERED** that for violating MCL 339.604 (b), (d), and (g); MCL 339.2411 (2)(a) and (b), Respondent shall pay a FINE in the amount of TEN THOUSAND dollars and 00/100 (\$10,000.00) within ninety (90) days of the effective date of this Order, and mailed to the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Enforcement Section, P.O. Box 30255, Lansing, MI 48909. The fine shall be paid by check or money order, made payable to the State of Michigan, and shall clearly display the complaint number **2300204**.

**IT IS FURTHER ORDERED** that Respondent shall pay RESTITUTION in the total amount of THIRTY-THREE THOUSAND NINE HUNDRED dollars and 00/100 (\$33,900.00) to the homeowners involved in this complaint and consolidated complaints (2201005, 2201043, and 2300204) within ninety (90) days of the effective date of this Order.

**IT IS FURTHER ORDERED** that Respondents shall submit satisfactory evidence of fine and restitution payments within ninety (90) days of the effective date of this Order, mailed to Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Enforcement Section, P.O. Box 30254, Lansing, MI 48909.

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF CONSTRUCTION CODES

DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS,  
BUREAU OF CONSTRUCTION CODES

Complainant,

v

DYLAN WEST  
License No. 21-01-216375

Complaint No. 2100061  
Docket No. 23-030720

AND

TURNKEY BUILDERS LLC  
License No. 21-02-220303

Complaint No. 2100062  
Docket No. 23-030719

Respondents

\_\_\_\_\_ /

**FINAL ORDER**

The Michigan Board of Residential Builders and Maintenance & Alteration Contractors (“Board”), having reviewed the administrative record, considered this matter at a regularly scheduled meeting held in Lansing, Michigan on January 11, 2024, and considered the Finding of Facts and Conclusions of Law in the Hearing Report of Erick Williams, Administrative Law Judge, dated December 18, 2023.

**IT IS ORDERED** that for violating MCL 339.604 (b), (d), and (h); MCL 339.2411 (2)(a), (c), and (l); Mich Admin Code R 338.1533 (1); Mich Admin Code R 338.1551 (2), Respondents are jointly and severally liable to pay a FINE in the amount of TEN THOUSAND dollars and 00/100 (\$10,000.00) within ninety (90) days of the effective date of this Order, and mailed to the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Enforcement Section, P.O. Box 30255, Lansing, MI 48909. The fine shall be paid by check or money order, made payable to the State of Michigan, and shall clearly display the complaint numbers **2100061 & 2100062**.

**IT IS FURTHER ORDERED** that Respondents are jointly and severally liable to pay RESTITUTION in the amount of ONE THOUSAND EIGHT HUNDRED NINETY-NINE dollars and 40/100 (\$1,899.40) to the homeowner(s) within ninety (90) days of the effective date of this Order.

**IT IS FURTHER ORDERED** that Respondents shall submit satisfactory evidence of fine and restitution payments within ninety (90) days of the effective date of this Order, mailed to Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Enforcement Section, P.O. Box 30254, Lansing, MI 48909.

**IT IS FURTHER ORDERED** that license numbers 2101216375 and 2102220303 shall be and hereby are IMMEDIATELY REVOKED. Respondent may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent is in suspended or revoked status.

**IT IS FURTHER ORDERED** that Respondent may petition for reinstatement of the licenses once all Final Orders of the Board have been fully satisfied.

**IT IS FURTHER ORDERED** that reinstatement of a license which has been revoked is not automatic and in the event that Respondent applies for reinstatement of the license, application shall be in accordance with MCL 339.411(5).

This Final Order is a public record required to be published and made available to the public pursuant to the Freedom of Information Act, MCL 15.231 *et seq.*

This Final Order shall not be construed as limiting the Department of Licensing and Regulatory Affairs, any other agency of the State of Michigan or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

This Order shall be effective on the date indicated below.

Given under my hand at Lansing, Michigan, this 20<sup>th</sup> day of February, 2024.

BY: *Felicia Badger*

Felicia Badger, Manager  
Enforcement Section  
Bureau of Construction Codes

Effective date: 2/20/2024

**STATE OF MICHIGAN**  
**MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Bureau of Construction Codes,  
Petitioner**

**V**

**Dylan West,  
Respondent**

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**Docket No.: 23-030720**

**Case No.: 2100061**

**Agency: Bureau of Construction  
Codes**

**Case Type: BCC Residential  
Builders**

**Filing Type: Appeal**

**CERTIFICATION OF RECORD**

I, Shelli Adams, certify that the attached file is the original record of the Michigan Office of Administrative Hearings and Rules in the above captioned matter, and that said record consists of those entries shown below.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the Michigan Office of Administrative Hearings and Rules to be hereunto affixed this Wednesday, December 20, 2023.

<u>Date</u>	<u>Document</u>
1. 12/18/23	Hearing Report
2. 12/05/23	Petitioner's Admitted Exhibits 1-6
3. 11/09/23	Returned Mail Notice of Hearing
4. 10/25/23	Notice of Hearing with Proof of Service
5. 10/23/23	Request for Hearing



Shelli Adams  
Michigan Office of Administrative  
Hearings and Rules



**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Docket No.: 23-030720**

**Bureau of Construction Codes,  
Petitioner**

**Case No.: 2100061**

**v**

**Agency: Bureau of Construction  
Codes**

**Dylan West,  
Respondent**

**Case Type: BCC Residential Builders**

**Filing Type: Appeal**

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**Issued and entered  
this 18<sup>th</sup> day of December 2023  
by: Raman Buttar  
Administrative Law Judge**

**HEARING REPORT**

**Procedural History**

This matter arises under authority and jurisdiction set forth in the Michigan Occupational Code, 1980 PA 299, MCL 339.101 *et. seq.* (Code), Mich Admin Code, R 792.10101 *et. seq.* (Hearing Rules) and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 *et. seq.* (APA).

On August 24, 2023, the Bureau of Construction Codes (Petitioner) issued a First Superseding Formal Complaint (Complaint) against Dylan West (Respondent), alleging violations one or more provisions of the Code and/or Administrative Rules promulgated thereunder.

On October 23, 2023, this matter was referred to the Michigan Office of Administrative Hearings and Rules (MOAHR) to schedule a contested case hearing.

On October 25, 2023, the MOAHR mailed a Notice of Hearing to all interested parties scheduling the hearing for December 5, 2023, at 9:00 a.m.

On November 9, 2023, the MOAHR received return mail for the Notice of Hearing mailed to Dylan West at 7604 Timbercreek Court, Unit 3, Portage Michigan. The envelope label indicated "return to sender, not deliverable as addressed, unable to forward".

On December 5, 2023, the hearing commenced as scheduled. Petitioner was represented by Aleksandrs K. Bomis, Assistant Attorney General. Petitioner presented the testimony of D.H. (Homeowner). As of 9:15 a.m., Respondent failed to appear. Based on Respondent's failure to appear, Petitioner moved for entry of a default against Respondent, under Sections 72(1) and 78(2) of the APA, and Mich Admin Code, R 792.10134.

MCL 24.272(1) provides:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

MCL 24.278(2) provides:

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

Mich Admin Code, R 792.10134(1) provides:

Rule 134.(1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

After determining that the MOAHR made every effort to serve Respondent with the Notice of Hearing, the Tribunal granted Petitioner's motion for entry of a default under Section 78(2) of the APA. Petitioner then proceeded in Respondent's absence, under Section 72(1) of the APA, and R 792.10134(1).

### **Issue and Applicable Law**

The issue presented is whether Respondent has violated the Code and/or Administrative Rules, as alleged in the First Superseding Formal Complaint.

MCL 339.514 provides:

Sec. 514.

(1) Within 60 days after receipt of an administrative law hearings examiner's hearing report, the board receiving the hearing report shall meet and make a

determination of the penalties to be assessed under article 6. The board's determination shall be made on the basis of the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript shall be made available to a board upon request. If a transcript or a portion of the transcript is requested, the board's determination of the penalty or penalties to be assessed under article 6 shall be made at a meeting within 60 days after receipt of a transcript or portion of the transcript.

(2) If a board does not determine the appropriate penalty or penalties to be assessed within the time limits prescribed by subsection (1), the director may determine the appropriate penalty and issue a final order for occupations regulated under articles 8 to 25.

(3) A member of a board who has participated in an investigation on a complaint filed with the department or who has attended an informal conference shall not participate in making a final determination in a proceeding on that complaint.

MCL 339.604(b) and (d) provide:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

\*\*\*\*

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

\*\*\*\*

(d) Demonstrates a lack of good moral character.

\*\*\*\*

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

\*\*\*\*

Mich Admin Code, R 338.1533(1) provides:

(1) All agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties. Copies of all agreements and changes to agreements shall be in writing, and provided to the customer.

Mich Admin Code, R 338.1551(2) provides:

Rule 51. \*\*\*\*

(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint, and forward a copy of the complaint to the licensee. The licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification for the complaint. If a complaint or a portion of the complaint is not acknowledged by the licensee as being justified, then the department shall notify the complainant of the area of disagreement.

\*\*\*\*

MCL 339.2411(2)(a), (c) and (l) provide:

Sec. 2411. \*\*\*\*

(2) A licensee or applicant who commits 1 or more of the following is subject to the penalties set forth in article 6:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

\*\*\*\*

(c) Failure to account for or remit money coming into the person's possession that belongs to others.

\*\*\*\*

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

\*\*\*\*

### **Summary of Exhibits**

Petitioner offered the following exhibits which were admitted into evidence unless otherwise indicated:

Petitioner Exhibit 1: Department of Licensing and Regulatory Affairs (LARA)  
Certification of Licensure for Turnkey Builders LLC issued



December 10, 2018; Department of Licensing and Regulatory Affairs (LARA) Certification of Licensure for Dylan West, issued October 3, 2017.

- Petitioner Exhibit 2: Turnkey Builders LLC Estimate #4894606 for [REDACTED] [REDACTED] dated September 24, 2019.
- Petitioner Exhibit 3: LARA Residential Builders – Statement of Complaint, signed by [REDACTED] on January 28, 2021.
- Petitioner Exhibit 4: Letter from Law Offices of John P. Tamboer PLC to Quanesha West re: Estimate #4894606, dated June 19, 2020.
- Petitioner Exhibit 5: State of Michigan 3-B Judicial District Court located in Centreville, Michigan, Small Claims Judgment in Case No: [REDACTED], dated May 24, 2021.
- Petitioner Exhibit 6: LARA Notice to Respondent Dylan West in Complaint No: COMPL-2100061, dated February 3, 2021; LARA Notice to Respondent Turnkey Builders LLC in Complaint No: COMPL-2100062, dated February 3, 2021.

The record was closed at the conclusion of the December 5, 2023, hearing.

### **Findings of Fact**

Based on a preponderance of the evidence, the Tribunal finds, as material fact:

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. Respondent was licensed as a Residential Builder Individual pursuant to the Code, license number 2101216375, which was issued on October 3, 2017 and was continuously licensed from October 3, 2017 to May 31, 2020 when the license lapsed. Respondent's license is currently in a Lapsed status. [Pet. Exh. 1, p 2].

3. At all times relevant, Dylan West served as the qualifying officer<sup>1</sup> for Turnkey Builders LLC. Turnkey Builders LLC has a related First Superseding Formal Complaint in case number 21-00062. [Pet. Exh. 1, p 2].
4. On or about September 24, 2019, Turnkey Builders LLC presented a written estimate (estimate # [REDACTED]) to homeowners (E.F. and D.H.) (“Homeowner” or “D.H.”) for roof replacement work on their home in Mendon, Michigan. The estimate did not include a date for work to commence or to be completed. Neither Respondent nor any representative of Turnkey Builders LLC signed the estimate. [Testimony of D.H.; Pet. Exh. 2].
5. The estimate for the roof replacement work totaled \$10,255.00. A deposit of \$1,538.25 was required. [Testimony of D.H.; Pet. Exh. 2, p 2].
6. On June 19, 2020, Homeowner enlisted the services of the Law Offices of John P. Tamboer, PLC to issue a letter to Quanesha West requesting Turnkey Builders LLC complete the roofing project per the terms of the September 24, 2019, contract. [Pet. Exh. 4].
7. On January 28, 2021, Homeowner submitted a Residential Builders-Statement of Complaint with the Bureau of Construction Codes, Licensing and Compliance Division against Turnkey Builders and Dylan West. [Pet. Exh. 3].
8. In the Statement of Complaint, Homeowner indicated that she was given an initial start date of the third week of November 2019, which was then delayed until June 2020, due to the COVID-19 pandemic and other weather and communication related matters. Homeowner did not receive any communication from Respondent after June 5, 2020. [Pet. Exh. 3].
9. On May 24, 2021, Homeowner received a Judgment – Small Claims in the 3B District Court, located in Centreville, Michigan, in Case No. [REDACTED], for \$1,538.25 in damages plus \$81.15 in costs and \$76.40 in other fees, totaling \$1,695.80 against Turnkey Builders LLS (*sic*) and Dylan West. [Testimony of D.H.; Pet. Exh. 5].
10. Homeowner also incurred serving fee costs of \$73.60 and \$130.00, which brings the total that Homeowner is seeking from Respondent and Turnkey Builders LLC to be  $\$1,695.80 + \$73.60 + \$130.00 = \$1,899.40$ . [Testimony of D.H.].
11. As of the date of the hearing Respondent has not satisfied the Small Claims Judgment. [Testimony of D.H.].

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<sup>1</sup> Residential Builder Individual Quanesha West has served as Respondent Turnkey’s qualifying officer since February 23, 2021.

**Conclusions of Law**

In this matter, Petitioner has the burden of proving by a preponderance of evidence that Respondent has violated the Code and/or Administrative Rules, as alleged in the Formal Complaint. The Michigan Supreme Court has held that, “[P]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence.” *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A “preponderance of evidence” is best described as that evidence having the greatest weight.

Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School District*, 428 Mich. 248 (1987). Here, Respondent failed to appear for the December 5, 2023, hearing. As a result, the Tribunal granted Petitioner’s motion for entry of a default. Based on entry of the default, all allegations in the Formal Complaint are deemed true and admitted and are adopted by this Tribunal as fact.

Accordingly, and based on the evidence presented, the Tribunal concludes that Respondent has violated MCL 339.604(b), (d) and (h), as well as MCL 339.2411(2)(a), (c) and (l).

**Restitution & Sanctions Request**

Counsel for the Bureau requested that Respondent be ordered to pay restitution. As set forth above in the Findings of Fact, Respondent’s actions (1) caused Homeowner (D.H.) to lose a \$1,538.25 downpayment paid for work that was never done in addition to the service fees and costs per the Small Claims Judgment totaling \$1,695.80. (2) Counsel for the Bureau also requested that Homeowner’s process serving fees also be reimbursed for a total of \$203.60. The judgment and costs total the requested restitution of \$1,899.40.

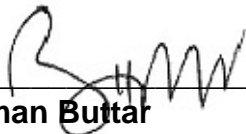
Counsel for the Bureau (1) requested that Respondent’s license be revoked, and (2) requested that the maximum fine of \$10,000.00 be imposed.

**Recommended Sanctions**

For Respondent’s violation of the Occupational Code, the Tribunal recommends that Respondent pay restitution as follows:

Homeowner:	<b>\$1,899.40</b>
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The Tribunal further recommends (1) that Respondent be fined \$10,000, which is the maximum allowable under MCL 339.602(e), (2) that Respondent's license as a residential builder be revoked, and (3) that the Board of Residential Builders and Maintenance & Alteration Contractors impose any other sanctions that may be deemed appropriate.

  
\_\_\_\_\_  
**Raman Buttar**  
**Administrative Law Judge**

**Notice to Agency to Provide MOAHR with Subsequent Agency or Court Orders**

The state agency that is a party to this matter, and/or referred this matter to MOAHR, shall serve MOAHR with any subsequent orders entered as a result of this ALJ's decision or proposed decision, including but not limited to the agency's final order, order to remand the matter to MOAHR for further proceedings, or order on appeal, as soon as practicable following entry of the order to:

Michigan Office of Administrative Hearings and Rules, General Adjudication, by **email (preferred)** to: [MOAHR-GA@michigan.gov](mailto:MOAHR-GA@michigan.gov); **or by regular mail** to: MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195.

See: Mich Admin Code, R 792.10120(2)(i).

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF CONSTRUCTION CODES  
BOARD OF RESIDENTIAL BUILDERS AND  
MAINTENANCE AND ALTERATION CONTRACTORS

In the Matter of

DYLAN WEST  
Qualifying Officer  
License No. 21-01-216375

Complaint No. 2100061

\_\_\_\_\_ /

FIRST SUPERSEDING FORMAL COMPLAINT

Assistant Attorney General Daniel P. Kelly, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Complainant), files this first superseding formal complaint against and Dylan West (Respondent), 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. Respondent was licensed as a Residential Builder Individual pursuant to the Code, from October 3, 2017 until his license lapsed on or about July 30, 2020. His License remains in a lapsed status.
3. At all relevant times, Respondent served as the qualifying officer<sup>1</sup> for Turnkey Builders, LLC (license number 21-02-220303) (Turnkey Builders), which has a related first superseding formal complaint in case number 21-00062.

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<sup>1</sup> Residential Builder Individual Quanesha West has served as Respondent Turnkey's qualifying officer since February 23, 2021.

4. After receiving a complaint against Respondent and Turnkey Builders, the Bureau investigated the allegations of the complaint pursuant to section 502 of the Code.

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

6. Section 604(d) of the Code subjects a licensee to sanction for demonstrating a lack of good moral character, which is defined in MCL 338.41 to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

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

8. Section 2411(a) of the Code subjects a licensee to sanction for abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

9. Section 2411(2)(c) of the Code subjects a licensee to sanction for failing to account for or remit money coming into the person's possession that belongs to others.

10. Section 2411(2)(l) of the Code subjects a licensee to sanction for becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

11. 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 shall be in writing and provided to the customer.

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

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

#### FACTUAL ALLEGATIONS

14. On or about September 23, 2019, Turnkey Builders presented a written estimate (estimate [REDACTED] to [REDACTED] (Homeowners) to perform roof replacement work on their home, located at [REDACTED] [REDACTED] Mendon, Michigan 49072. The estimate did not include a date for work to commence or be completed.

15. The estimate involved the removal and replacement of the roof on the house and back porch for the cost of \$10,255.00, and required a deposit of \$1,538.25.

16. The Homeowners accepted and signed the estimate on or about September 23, 2019. The Estimate was not signed by Respondent or anyone on behalf of Turnkey Builders.

17. On or about September 25, 2019, Respondent and Turnkey Builders received a deposit from the Homeowners in the amount of \$1,538.25.

18. On or about March 23, 2020, the Homeowners agreed to have rolled roofing placed on smaller roofs on the house. This change to the agreement was not provided in writing.

19. Despite the above, to date, Respondent and Turnkey Builders have not completed any work on the project.

20. On or about February 3, 2021, the Department mailed Notices to Respondent and Turnkey Builders, requesting a response in writing by March 8, 2021, to confirm or deny the justification of the complaint. Respondent and Turnkey Builders failed to respond in writing to the complaint.

21. Homeowner [REDACTED] filed a small claims action in 3-B District Court, in Centerville, MI, Case No. [REDACTED] against both Respondent and Turnkey Builders. On May 24, 2021, the court issued a Small Claims Judgment against Respondent and Turnkey Builders, in the amount of \$1,695.80, plus statutory interest.

22. As of the date of this Formal Complaint, neither Respondent nor Turnkey Builders have satisfied the Small Claims Judgment.

#### COUNT I

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

#### COUNT II

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



COUNT III

25. Respondent's conduct as described above constitutes failing to sign an agreement between the builder and customer and failing to reduce changes to an agreement between a builder and customer to writing, contrary Mich Admin Code, R 338.1533(1), in violation of section 604(h) of the Code.

COUNT IV

26. Respondent's conduct as described above constitutes failing to respond within 15 days from receipt of the complaint to confirm or deny the justification of the complaint, contrary to Mich Admin Code, R 338.1551(2), in violation of section 604(h) of the Code.

COUNT V

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

COUNT VI

28. Respondent's conduct as described above constitutes failing to account for or remit money coming into the person's possession that belongs to others, in violation of section 2411(2)(c) of the Code.

COUNT VII

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

WHEREFORE, Complainant, Department of Licensing and Regulatory Affairs, hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq.* and the Occupational Code 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 by regular mail to the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, P.O. Box 30254, Lansing, MI 48909 or by email to [LARA-BCC-RBS-Compliance@michigan.gov](mailto:LARA-BCC-RBS-Compliance@michigan.gov), with a copy mailed to the undersigned assistant attorney general.

FURTHER, the formal complaint previously filed against Respondent on November 9, 2022 is hereby WITHDRAWN and replaced in full by this superseding complaint.

Respectfully submitted,

/s/ Daniel P. Kelly  
Daniel P. Kelly (P79017)  
Assistant Attorney General  
Licensing & Regulation Division  
P.O. Box 30758  
Lansing, MI 48909  
Telephone: (517) 335-7569  
Facsimile: (517) 241-1997

Dated: August 24, 2023

LF: 2023-0381828-A/West, Dylan, 2100061 (Res Bldr)/First Superseding Formal Complaint – 2023-08-24

**STATE OF MICHIGAN**  
**MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Bureau of Construction Codes,  
Petitioner**

**V**

**Turnkey Builders LLC,  
Respondent**

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**Docket No.: 23-030719**

**Case No.: 2100062**

**Agency: Bureau of Construction  
Codes**

**Case Type: BCC Residential  
Builders**

**Filing Type: Formal Complaint**

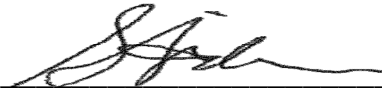
**CERTIFICATION OF RECORD**

I, Shelli Adams, certify that the attached file is the original record of the Michigan Office of Administrative Hearings and Rules in the above captioned matter, and that said record consists of those entries shown below.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the Michigan Office of Administrative Hearings and Rules to be hereunto affixed this Wednesday, December 20, 2023.

	<u>Date</u>	<u>Document</u>
1.	12/18/23	Hearing Report
2.	12/05/23	Petitioner's Admitted Exhibits 1-6
3.	11/27/23	Returned Mail, Notice of Hearing
4.	11/17/23	Notice of Hearing with Amended Proof of Service
5.	11/14/23	Petitioner's Witness and Exhibit Lists - Attachments not made part of Certification of Record
6.	11/01/23	Returned Mail, Notice of Hearing
7.	10/25/23	Notice of Hearing with Proof of Service

8. 10/23/23 Request for Hearing



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Shelli Adams  
Michigan Office of Administrative  
Hearings and Rules



**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Docket No.: 23-030719**

**Bureau of Construction Codes,  
Petitioner**

**Case No.: 2100062**

**v**

**Agency: Bureau of Construction  
Codes**

**Turnkey Builders LLC,  
Respondent**

**Case Type: BCC Residential Builders**

**Filing Type: Formal Complaint**

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**Issued and entered  
this 18<sup>th</sup> day of December 2023  
by: Raman Buttar  
Administrative Law Judge**

**HEARING REPORT**

**Procedural History**

This matter arises under authority and jurisdiction set forth in the Michigan Occupational Code, 1980 PA 299, MCL 339.101 *et. seq.* (Code), Mich Admin Code, R 792.10101 *et. seq.* (Hearing Rules) and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 *et. seq.* (APA).

On August 24, 2023, the Bureau of Construction Codes (Petitioner) issued a First Superseding Formal Complaint (Complaint) against Turnkey Builders LLC (Respondent), alleging violations one or more provisions of the Code and/or Administrative Rules promulgated thereunder.

On October 23, 2023, this matter was referred to the Michigan Office of Administrative Hearings and Rules (MOAHR) to schedule a contested case hearing.

On October 25, 2023, the MOAHR mailed a Notice of Hearing to all interested parties scheduling the hearing for December 5, 2023, at 9:00 a.m.

On November 1, 2023, the MOAHR received returned mail for the Notice of Hearing mailed to Turnkey Builders LLC at 251 North Rose Street, Suite 200, Kalamazoo. The envelope was labeled "return to sender, moved left no address, unable to forward".

**23-030719**

**Page 2**

On November 17, 2023, the MOAHR issued the Notice of Hearing to a new address for Turnkey Builders, LLC at 5695 Woodbrook Street, Schoolcraft, Michigan 49087 and to the email address: [admin@tkbuildersllc.com](mailto:admin@tkbuildersllc.com).

On November 27, 2023, the MOAHR received returned mail. The envelope was labeled "return to sender, no mail receptacle, unable to forward".

On December 5, 2023, the hearing commenced as scheduled. Petitioner was represented by Aleksandrs K. Bomis, Assistant Attorney General. Petitioner presented the testimony of D.H. (Homeowner). As of 9:15 a.m., Respondent failed to appear. Based on Respondent's failure to appear, Petitioner moved for entry of a default against Respondent, under Sections 72(1) and 78(2) of the APA, and Mich Admin Code, R 792.10134.

MCL 24.272(1) provides:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

MCL 24.278(2) provides:

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

Mich Admin Code, R 792.10134(1) provides:

Rule 134.(1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

After determining that the MOAHR made every effort to serve Respondent with the Notice of Hearing, the Tribunal granted Petitioner's motion for entry of a default under Section 78(2) of the APA. Petitioner then proceeded in Respondent's absence, under Section 72(1) of the APA, and R 792.10134(1).

**Issue and Applicable Law**

The issue presented is whether Respondent has violated the Code and/or Administrative Rules, as alleged in the First Superseding Formal Complaint.

MCL 339.514 provides:

Sec. 514.

(1) Within 60 days after receipt of an administrative law hearings examiner's hearing report, the board receiving the hearing report shall meet and make a determination of the penalties to be assessed under article 6. The board's determination shall be made on the basis of the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript shall be made available to a board upon request. If a transcript or a portion of the transcript is requested, the board's determination of the penalty or penalties to be assessed under article 6 shall be made at a meeting within 60 days after receipt of a transcript or portion of the transcript.

(2) If a board does not determine the appropriate penalty or penalties to be assessed within the time limits prescribed by subsection (1), the director may determine the appropriate penalty and issue a final order for occupations regulated under articles 8 to 25.

(3) A member of a board who has participated in an investigation on a complaint filed with the department or who has attended an informal conference shall not participate in making a final determination in a proceeding on that complaint.

MCL 339.604(b) and (d) provide:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

\*\*\*\*

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

\*\*\*\*

(d) Demonstrates a lack of good moral character.

\*\*\*\*

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

\*\*\*\*

Mich Admin Code, R 338.1533(1) provides:

(1) All agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties. Copies of all agreements and changes to agreements shall be in writing, and provided to the customer.

Mich Admin Code, R 338.1551(2) provides:

Rule 51. \*\*\*\*

(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint, and forward a copy of the complaint to the licensee. The licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification for the complaint. If a complaint or a portion of the complaint is not acknowledged by the licensee as being justified, then the department shall notify the complainant of the area of disagreement.

\*\*\*\*

MCL 339.2411(2)(a), (c) and (l) provide:

Sec. 2411. \*\*\*\*

(2) A licensee or applicant who commits 1 or more of the following is subject to the penalties set forth in article 6:

(a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

\*\*\*\*

(c) Failure to account for or remit money coming into the person's possession that belongs to others.

\*\*\*\*

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy



judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

\*\*\*\*

### **Summary of Exhibits**

Petitioner offered the following exhibits which were admitted into evidence unless otherwise indicated:

- Petitioner Exhibit 1: Department of Licensing and Regulatory Affairs (LARA) Certification of Licensure for Turnkey Builders LLC issued December 10, 2018; Department of Licensing and Regulatory Affairs (LARA) Certification of Licensure for Dylan West, issued October 3, 2017.
- Petitioner Exhibit 2: Turnkey Builders LLC Estimate [REDACTED] and [REDACTED] dated September 24, 2019.
- Petitioner Exhibit 3: LARA Residential Builders – Statement of Complaint, signed by [REDACTED] on January 28, 2021.
- Petitioner Exhibit 4: Letter from Law Offices of John P. Tamboer PLC to Quanesha West re: [REDACTED], dated June 19, 2020.
- Petitioner Exhibit 5: State of Michigan 3-B Judicial District Court located in Centreville, Michigan, Small Claims Judgment in Case No: 21-320-SC, dated May 24, 2021.
- Petitioner Exhibit 6: LARA Notice to Respondent Dylan West in Complaint No: COMPL-2100061, dated February 3, 2021; LARA Notice to Respondent Turnkey Builders LLC in Complaint No: COMPL-2100062, dated February 3, 2021.

The record was closed at the conclusion of the December 5, 2023, hearing.

### **Findings of Fact**

Based on a preponderance of the evidence, the Tribunal finds, as material fact:

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. Respondent Turnkey Builders LLC, license number 2102220303, was licensed as a Residential Builder Company, and was continuously licensed from December 10, 2018, to September 3, 2020, when the license was put in a Section 2405 Suspension. The license was made active again on February 23, 2021, and was continuously licensed from February 23, 2021, to May 31, 2021, when the license lapsed. The license was made active again on August 18, 2021. [Pet. Exh. 1, p 1].
3. At all times relevant, Dylan West (license number 2101216375) served as the qualifying officer<sup>1</sup> for Respondent. Mr. West has a related First Superseding Formal Complaint in case number 21-00061. [Pet. Exh. 1, p 2].
4. On or about September 24, 2019, Respondent presented a written estimate (estimate [REDACTED]) to homeowners (E.F. and D.H.) (“Homeowner” or “D.H.”) for roof replacement work on their home in Mendon, Michigan. The estimate did not include a date for work to commence or to be completed. No one on behalf of Respondent, nor Dylan West signed the estimate. [Testimony of D.H.; Pet. Exh. 2].
5. The estimate for the roof replacement work totaled \$10,255.00. A deposit of \$1,538.25 was required. [Testimony of D.H.; Pet. Exh. 2, p 2].
6. On June 19, 2020, Homeowner enlisted the services of the Law Offices of John P. Tamboer, PLC to issue a letter to Quanesha West, requesting Respondent complete the roofing project per the terms of the September 24, 2019, contract. [Pet. Exh. 4].
7. On January 28, 2021, Homeowner submitted a Residential Builders-Statement of Complaint with the Bureau of Construction Codes, Licensing and Compliance Division against Respondent and Dylan West. [Pet. Exh. 3].
8. In the Statement of Complaint, Homeowner indicated that she was given an initial start date of the third week of November 2019, which was then delayed until June 2020, due to the COVID-19 pandemic and other weather and communication related matters. Homeowner did not receive any communication from Respondent after June 5, 2020. [Pet. Exh. 3].

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<sup>1</sup> Residential Builder Individual Quanesha West has served as Respondent Turnkey’s qualifying officer since February 23, 2021.

9. On May 24, 2021, Homeowner received a Judgment – Small Claims in the 3B District Court, located in Centreville, Michigan, in Case No. [REDACTED], for \$1,538.25 in damages plus \$81.15 in costs and \$76.40 in other fees, totaling \$1,695.80 against Turnkey Builders LLS (*sic*) and Dylan West. [Testimony of D.H.; Pet. Exh. 5].
10. Homeowner also incurred serving fee costs of \$73.60 and \$130.00, which brings the total that Homeowner is seeking from Respondent to be \$1,695.80 + \$73.60 + \$130.00 = \$1,899.40. [Testimony of D.H.].
11. As of the date of the hearing Respondent has not satisfied the Small Claims Judgment. [Testimony of D.H.].

### **Conclusions of Law**

In this matter, Petitioner has the burden of proving by a preponderance of evidence that Respondent has violated the Code and/or Administrative Rules, as alleged in the Formal Complaint. The Michigan Supreme Court has held that, “[P]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence.” *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A “preponderance of evidence” is best described as that evidence having the greatest weight.

Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School District*, 428 Mich. 248 (1987). Here, Respondent failed to appear for the December 5, 2023, hearing. As a result, the Tribunal granted Petitioner’s motion for entry of a default. Based on entry of the default, all allegations in the Formal Complaint are deemed true and admitted and are adopted by this Tribunal as fact.

Accordingly, and based on the evidence presented, the Tribunal concludes that Respondent has violated MCL 339.604(b), (d) and (h), as well as MCL 339.2411(2)(a), (c) and (l).

### **Restitution & Sanctions Request**

Counsel for the Bureau requested that Respondent be ordered to pay restitution. As set forth above in the Findings of Fact, Respondent’s actions (1) caused Homeowner (D.H.) to lose a \$1,538.25 downpayment paid for work that was never done in addition to the service fees and costs per the Small Claims Judgment totaling \$1,695.80. (2) Counsel for the Bureau also requested that Homeowner’s process serving fees also be

reimbursed for a total of \$203.60. The judgment and costs total the requested restitution of \$1,899.40.

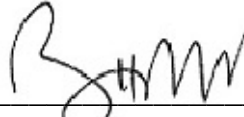
Counsel for the Bureau (1) requested that Respondent's license be revoked because he poses a risk to the public, and (2) requested that the maximum fine of \$10,000.00 be imposed.

**Recommended Sanctions**

For Respondent's violation of the Occupational Code, the Tribunal recommends that Respondent pay restitution as follows:

Homeowner: **\$1,899.40**

The Tribunal further recommends (1) that Respondent be fined \$10,000, which is the maximum allowable under MCL 339.602(e), (2) that Respondent's license as a residential builder be revoked, and (3) that the Board of Residential Builders and Maintenance & Alteration Contractors impose any other sanctions that may be deemed appropriate.



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**Raman Buttar**  
**Administrative Law Judge**

**Notice to Agency to Provide MOAHR with Subsequent Agency or Court Orders**

The state agency that is a party to this matter, and/or referred this matter to MOAHR, shall serve MOAHR with any subsequent orders entered as a result of this ALJ's decision or proposed decision, including but not limited to the agency's final order, order to remand the matter to MOAHR for further proceedings, or order on appeal, as soon as practicable following entry of the order to:

Michigan Office of Administrative Hearings and Rules, General Adjudication, by **email (preferred)** to: [MOAHR-GA@michigan.gov](mailto:MOAHR-GA@michigan.gov); **or by regular mail** to: MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195.

See: Mich Admin Code, R 792.10120(2)(i).

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF CONSTRUCTION CODES  
BOARD OF RESIDENTIAL BUILDERS AND  
MAINTENANCE AND ALTERATION CONTRACTORS

In the Matter of

TURNKEY BUILDERS LLC  
License No. 21-02-220303

Complaint No. 2100062

\_\_\_\_\_ /

FIRST SUPERSEDING FORMAL COMPLAINT

Assistant Attorney General Daniel P. Kelly, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Complainant), files this first superseding formal complaint against Turnkey Builders LLC (Respondent), 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. Respondent is currently licensed as a Residential Builder Company pursuant to the Code.
3. At all relevant times, Dylan West (license number 21-01-216375) served as the qualifying officer<sup>1</sup> for Respondent. Mr. West has a related first superseding formal complaint in case number 21-00061.
4. After receiving a complaint against Respondent and Dylan West, the Bureau investigated the allegations of the complaint pursuant to section 502 of the Code.

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<sup>1</sup> Residential Builder Individual Quanesha West has served as Respondent Turnkey's qualifying officer since February 23, 2021.

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

6. Section 604(d) of the Code subjects a licensee to sanction for demonstrating a lack of good moral character, which is defined in MCL 338.41 to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

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

8. Section 2411(a) of the Code subjects a licensee to sanction for abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

9. Section 2411(2)(c) of the Code subjects a licensee to sanction for failing to account for or remit money coming into the person's possession that belongs to others.

10. Section 2411(2)(l) of the Code subjects a licensee to sanction for becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business

11. 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 shall be in writing and provided to the customer.

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

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

### FACTUAL ALLEGATIONS

14. On or about September 23, 2019, Respondent presented a written estimate (estimate [REDACTED]) to [REDACTED] (Homeowners) to perform roof replacement work on their home, located at [REDACTED], Mendon, Michigan 49072. The estimate did not include a date for work to commence or be completed.

15. The estimate involved the removal and replacement of the roof on the house and back porch for the cost of \$10,255.00, and required a deposit of \$1,538.25.

16. The Homeowners accepted and signed the estimate on or about September 23, 2019. The Estimate was not signed by the Respondent or anyone on behalf of Respondent.

17. On or about September 25, 2019, Respondent and Dylan West and received a deposit from the Homeowners in the amount of \$1,538.25.

18. On or about March 23, 2020, the Homeowners agreed to have rolled roofing placed on smaller roofs on the house. This change to the agreement was not provided in writing.

19. Despite the above, to date, Respondent and Dylan West have not completed any work on the project.

20. On or about February 3, 2021, the Department mailed Notices to Respondent and Dylan West, requesting a response in writing by March 8, 2021, to confirm or deny the justification of the complaint. Respondent and Dylan West failed to respond in writing to the complaint.

21. Homeowner Doris Hamilton filed a small claims action in 3-B District Court, in Centerville, MI, Case No. [REDACTED] against both Respondent and Dylan West. On May 24, 2021, the court issued a Small Claims Judgment against Respondent and Dylan West, in the amount of \$1,695.80, plus statutory interest.

22. As of the date of this Formal Complaint, neither Respondent nor Dylan West have satisfied the Small Claims Judgment.

#### COUNT I

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

#### COUNT II

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

#### COUNT III

25. Respondent's conduct as described above constitutes failing to sign an agreement between the builder and customer and failing to reduce changes to an agreement between a builder and customer to writing, contrary Mich Admin Code, R 338.1533(1), in violation of section 604(h) of the Code.



COUNT IV

26. Respondent's conduct as described above constitutes failing to respond within 15 days from receipt of the complaint to confirm or deny the justification of the complaint, contrary to Mich Admin Code, R 338.1551(2), in violation of section 604(h) of the Code.

COUNT V

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

COUNT VI

28. Respondent's conduct as described above constitutes failing to account for or remit money coming into the person's possession that belongs to others, in violation of section 2411(2)(c) of the Code.

COUNT VII

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

WHEREFORE, Complainant, Department of Licensing and Regulatory Affairs, hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq.* and the Occupational Code 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 by regular mail to the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, P.O. Box 30254, Lansing, MI 48909 or by email to [LARA-BCC-RBS-Compliance@michigan.gov](mailto:LARA-BCC-RBS-Compliance@michigan.gov), with a copy mailed to the undersigned assistant attorney general.

FURTHER, the formal complaint previously filed against Respondent on November 9, 2022 is hereby WITHDRAWN and replaced in full by this superseding complaint.

Respectfully submitted,

/s/ Daniel P. Kelly  
Daniel P. Kelly (P79017)  
Assistant Attorney General  
Licensing & Regulation Division  
P.O. Box 30758  
Lansing, MI 48909  
Telephone: (517) 335-7569  
Facsimile: (517) 241-1997

Dated: August 24, 2023

LF: 2023-0381826-A/Turnkey Builders LLC, 2100062/First Superseding Formal Complaint – 2023-08-24

**IT IS FURTHER ORDERED** that license number 2101205695 shall be and hereby is IMMEDIATELY REVOKED and shall remain revoked for a minimum of ten (10) years of the effective date of this Order. Respondent may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent is in suspended or revoked status.

**IT IS FURTHER ORDERED** that Respondent may petition for reinstatement of the license after ten (10) years of the effective date of this Order and once all Final Orders of the Board have been fully satisfied.

**IT IS FURTHER ORDERED** that reinstatement of a license which has been revoked is not automatic and in the event that Respondent applies for reinstatement of the license, application shall be in accordance with MCL 339.411(5).

This Final Order is a public record required to be published and made available to the public pursuant to the Freedom of Information Act, MCL 15.231 *et seq.*

This Final Order shall not be construed as limiting the Department of Licensing and Regulatory Affairs, any other agency of the State of Michigan or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

This Order shall be effective on the date indicated below.

Given under my hand at Lansing, Michigan, this 20th day of February, 2024.

BY: *Felicia Badger*

Felicia Badger, Manager  
Enforcement Section  
Bureau of Construction Codes

Effective date: 2/20/2024

**STATE OF MICHIGAN**  
**MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Docket No.: 23-023200**

**Bureau of Construction Codes,  
Petitioner**

**Case No.: 2300204, 2000613,**

**V**

**Agency: Bureau of Construction  
Codes**

**Brent Papineau (DBA B & J  
Construction),  
Respondent**

**Case Type: BCC Residential Builders**

**Filing Type: Formal Complaint**

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**CERTIFICATION OF RECORD**

I, Madeline Kulhanek, certify that the attached file is the original record of the Michigan Office of Administrative Hearings and Rules in the above captioned matter, and that said record consists of those entries shown below.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the Michigan Office of Administrative Hearings and Rules to be hereunto affixed this Monday, November 27, 2023.

<u>Date</u>	<u>Document</u>
1. 11/27/23	Hearing Report
2. 09/11/23	Petitioner's Exhibits 7-8, Offered and Admitted into Hearing Record
3. 08/25/23	Order Allowing Reopening of the Record
4. 08/23/23	Petitioner's Exhibits 1-6, Offered and Admitted at Hearing
5. 08/17/23	Petitioner's Corrected Exhibit List ( <i>Attachments not made part of Certified Record</i> )
6. 08/16/23	Petitioner's Exhibit List ( <i>Attachments not made part of Certified Record</i> )
7. 07/21/23	Notice of Telephone Hearing with Proof of Service

8. 07/20/23 Request for Hearing

*Madeline Kulhanek*

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Madeline Kulhanek  
Michigan Office of Administrative  
Hearings and Rules



**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Docket No.: 23-023200**

**Bureau of Construction Codes,  
Petitioner**

**Case No.: 2300204 (Consolidated  
with 2000613, 2200892,  
2201005, 2201043)**

**v**

**Brent Papineau (DBA B & J  
Construction),  
Respondent**

**Agency: Bureau of Construction  
Codes**

**Case Type: BCC Residential Builders**

**Filing Type: Formal Complaint**

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**Issued and entered  
this 27<sup>th</sup> day of November 2023  
by: Paul Smith  
Administrative Law Judge**

**HEARING REPORT**

**Procedural History**

This is a proceeding held under the Occupational Code, MCL 339.101 *et seq.* in accordance with the Administrative Procedures Act, MCL 24.201 *et seq.* This matter is before this Tribunal to address the Formal Complaint filed on June 22, 2023, by the Department of Licensing and Regulatory Affairs (LARA), Bureau of Construction Codes (Bureau) against Respondent Brent Papineau, a licensed residential builder doing business as B & J Construction.

On July 20, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request for hearing from the Bureau. On July 21, 2023, MOAHR issued a notice of hearing, scheduling a telephone hearing for August 23, 2023. The hearing commenced as scheduled. Administrative Law Judge (ALJ) Paul Smith presided. Assistant Attorney General Sharon Park represented the Bureau. Respondent Papineau appeared without legal counsel.

The Bureau presented the testimony of M.P. (Homeowner 1), S.F. (Homeowner 2), K.B. (Homeowner 3), K.K. (daughter of I.K., Homeowner 4), and C.R. (acting under a power

of attorney for E.W. and B.W., Homeowners 5).<sup>1</sup> The Bureau also offered for admission the following exhibits, which were admitted without objection:

- Exhibit P-1:** Certification of Licensure
- Exhibit P-2:** Homeowner 1 Documents
- Exhibit P-3:** Homeowner 2 Documents
- Exhibit P-4:** Homeowner 3 Documents
- Exhibit P-5:** Homeowner 4 Documents
- Exhibit P-6:** Homeowner 5 Documents

Respondent testified on his own behalf and did not offer any exhibits.

On August 25, 2023, the undersigned ALJ issued an order reopening the record to allow the Bureau to submit evidence in the form of building inspection reports, receipts, or written repair estimates to support its request for an order of restitution and to allow Respondent to respond to any additional documents submitted by the Bureau.

The Bureau submitted additional documentation on September 11, 2023. The additional documents, which are incorporated into the hearing record, were as follows:

- Exhibit P-7:** Letter from Delta County Building and Zoning Administrator
- Exhibit P-8:** Estimate for Repair Work on 4130 Hwy M-35

Respondent did not file a response. The record closed on September 25, 2023, the date by which any response for Respondent was due.

### **Issues and Applicable Law**

The issue is whether Respondents violated the Occupational Code as alleged in the Formal Complaint.

Section 2411 of the Code states in pertinent part:

\* \* \*

- (2) A licensee or applicant who commits 1 or more of the following is subject to the penalties set forth in article 6:
  - (a) Abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

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<sup>1</sup> The Formal Complaint used initials for the persons allegedly impacted by Respondent's conduct and referred to them as "Homeowners" 1 through 5. This Hearing Report will use the same designations.

- (b) Diversion 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.

\* \* \*

[MCL 339.2411.]

Section 604 of the Code states in pertinent part:

A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

\* \* \*

- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.

\* \* \*

- (d) Demonstrates a lack of good moral character.
- (e) Commits an act of gross negligence in practicing an occupation.

\* \* \*

- (g) Commits an act which demonstrates incompetence.

\* \* \*

[MCL 339.604.]

The phrase “good moral character,” as used in the Occupational Code, means “the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner.” See MCL 339.104(8); MCL 338.41(1).



As used in the Occupational Code, "incompetence" means "a departure from, or a failure to conform to, minimal standards of acceptable practice for an occupation." See MCL 339.104(9).

### **Respondent's Testimony**

In his testimony, Respondent gave a number of excuses for the problems that he had in completing the projects and returning money to his customers. He explained that it was difficult for him to find willing and able laborers to assist him. Respondent had Covid-19 multiple times and a bad case of pneumonia during the time period in question. Rain and snow delayed some of his projects. Because at least some of his customers took him to court, he claimed that he was prohibited from repaying them because a judge instructed him not to contact his former customers. During the hearing, Respondent promised that he would repay Homeowner 1 (M.P.) and Homeowner 3 (K.B.). Respondent disagreed with the testimony of Homeowner 2 (S.F.) and testified that her project was fully completed as she had requested.

### **Findings of Fact**

Based on the entire record in this matter, including the witness testimony and the admitted exhibits, the following findings of fact are established:

1. Respondent Brent Papineau is a licensed residential builder doing business as B & J Construction (Exhibit P-1).

#### ***Homeowner 1 (M.P.)***

2. In 2021, M.P. lived in a house in on M-35 in Brampton, Michigan. (Testimony of M.P.; Exhibit P-6.)
3. On April 6, 2021, M.P. engaged Respondent to install a metal roof on her attached garage. (Testimony of M.P.; Exhibit P-6.)
4. M.P. and Respondent agreed on a price of \$7,500. (Testimony of M.P.; Exhibit P-6.)
5. On April 6, 2021, M.P. wrote a personal check to Respondent in the amount of \$4,500 for a downpayment on the roofing job. Respondent cashed the check. (Testimony of M.P.; Exhibit P-6.)
6. Respondent advised M.P. that he would begin work on the job immediately. (Testimony of M.P.)
7. Respondent never started the job in 2021. On multiple occasions, M.P. reached out to Respondent to ask him to start the work. She had difficulty getting through

to Respondent because the voicemail on his telephone was always full. When she did reach him, he made excuses such as a claim that he was waiting for a necessary part or that he was having trouble getting the necessary workers. (Testimony of M.P.)

8. In 2022, M.P. asked Respondent to return her \$4,500 downpayment. (Testimony of M.P.)
9. On February 23, 2023, M.P. obtained a small claims judgment against Respondent in the amount of \$4,596, which consisted of \$4,500 in damages and \$96 in costs. (Testimony of M.P.; Exhibit P-6.)
10. As of the date of the hearing, M.P. had not yet received from Respondent the return of her downpayment. (Testimony of M.P.)

***Homeowner 2 (S.F.)***

11. S.F. lives in a house on 18<sup>th</sup> Street in Escanaba, Michigan. (Testimony of S.F.)
12. On February 22, 2022, S.F. engaged Respondent to finish part of her basement. For a price of \$13,700, Respondent agreed to build four walls, add a drop ceiling, frame out some doors, install basement jacks at 4 different points, and to “run power” (which meant to do electrical work). S.F. signed on contract and paid Respondent a \$5,000 downpayment. (Testimony of S.F.; Exhibit P-2.)
13. On or about February 28, 2022, Respondent started working on S.F.’s basement project and asked S.F. for money. On February 28, 2022, S.F. wrote personal checks in the amounts of \$3,000 and \$500 to Respondent, who subsequently cashed the checks. (Testimony of S.F.; Exhibit P-2.)
14. Respondent worked sporadically on S.F.’s basement project during March 2022. Although the project was not finished, S.F. paid Respondent \$5,200 in cash on March 14, 2022. Her cash payment to Respondent covered her total obligation under their contract. After receiving the cash payment from S.F., Respondent did not return to finish the project. (Testimony of S.F.; Exhibit P-2.)
15. S.F. testified credibly that Respondent only completed about 60% of the project. Respondent only built 3 and ½ of the 4 walls promised and did not finish the drop ceiling. One of the walls subsequently fell over. The wiring that Respondent had added in the walls was not connected to any power supply. One structural wall was built in the wrong spot to support the floor. The floor joists that Respondent installed were not attached properly. All of the walls would have to be removed to redo the electrical work and Respondent used the wrong drywall material. (Testimony of S.F.; Exhibit P-2; Exhibit P-7.)

16. All of the work that Respondent did for S.F. must be redone by another contractor to complete the job that S.F. had engaged Respondent to do. (Testimony of S.F.)

***Homeowner 3 (K.B.)***

17. K.B. engaged Respondent to do two construction jobs. For her house on M-35 in Ford River Township, Michigan, she engaged Respondent to remove the old shingles, install a metal roof, remove old siding, replace any rotted wood, and install new siding. Respondent agreed to perform this work for \$20,000 and cashed a personal check in the amount of \$12,000 as a downpayment. (Testimony of K.B.; Exhibit P-3.)
18. K.B. engaged Respondent for the Ford River job in August 2022. Respondent brought a dumpster to the house and removed the existing siding but did not do any other parts of the job. (Testimony of K.B.)
19. K.B. was not residing in the Ford River house at the time she engaged Respondent to do the work. (Testimony of K.B.)
20. Some pieces of the old siding on the Ford River house were already missing before Respondent began his work. The majority of the old siding was, however, intact. After Respondent removed the rest of the old siding, portions of the interior of the house were exposed to the elements. (Testimony of K.B.)
21. K.B.'s last contact with Respondent was in October 2022. She learned from Menard's that, contrary to Respondent's assertions, he had never ordered the material necessary to install the new metal roof. (Testimony of K.B.)
22. In the spring of 2023, K.B. paid another contractor \$1,200 to "wrap" the house with foam insulation to protect it from the elements and to prepare it for the installation of new siding. (Testimony of K.B.; Exhibit P-8.)
23. K.B. lived in a house on LL Road in Rapid River, Michigan. For the Rapid River house, she engaged Respondent to install some materials for a metal roof that she had already purchased. For this job, K.B. paid Respondent a \$2,500 downpayment. (Testimony of K.B.)
24. Respondent and some workers spent a portion of one day working on the Rapid River job. During that day, they removed the ridge cap of the roof, which exposed the attic to the elements. Respondent never returned to finish the work on the Rapid River house. (Testimony of K.B.)
25. Moisture entering through the exposed area caused some damage to drywall inside her house. Eventually, K.B. covered the exposed area with some old shingles to prevent further moisture damage. (Testimony of K.B.)

26. K.B. asked Respondent to return both of her downpayments (\$12,000 for the Ford River house and \$2,500 for the Rapid River house) but he never returned the downpayments. (Testimony of K.B.)

***Homeowners 4 (I.K. and K.K.)***

27. K.K. lives with her mother, I.K., in Rock, Michigan. K.K. acts for I.K. under a power of attorney. (Testimony of K.K.)

28. On July 15, 2022, K.K. engaged Respondent to install on new roof on their house. The total price for the project was to be \$15,000. K.K. made a \$7,500 downpayment to Respondent on the same day she engaged Respondent to do the work. (Testimony of K.K.; Exhibit P-4.)

29. Respondent told K.K. that he would begin the work one week after receiving the downpayment. When that did not happen, K.K. inquired about the start date on July 25, 2022. Respondent told her that he would start the work in mid-August at the latest. Respondent did not begin the work in August. (Testimony of K.K.)

30. K.K. contacted Respondent on September 1, 2022, to ask about the project. He told her that he would call her back later that day, but she never heard anything back from Respondent. (Testimony of K.K.)

31. In October 2022, K.K. asked Respondent to return her downpayment check. He told her that he could not do so because he had already spent the money on materials. (Testimony of K.K.)

32. Respondent never did any work on the house in Rock, Michigan. (Testimony of K.K.)

33. In November 2022, after her attorney sent a demand letter to Respondent, Respondent returned the \$7,500 downpayment to K.K. (Testimony of K.K.)

***Homeowners 5 (E.W. and B.W.)***

34. C.R. is the daughter of E.W. and B.W. who live in Wisconsin and own an empty house in Rapid River, Michigan. C.R. acts under a power of attorney for her mother, B.W. (Testimony of C.R.)

35. On September 30, 2019, C.R. engaged Respondent to replace a garage roof on the Rapid River property. C.R. made a \$3,000 downpayment to Respondent on the same day that she engaged Respondent for the project. (Testimony of C.R.; Exhibit P-5.)

36. Respondent advised C.R. that the project would begin shortly after he received the downpayment, but nothing was done by December 2019, by which time the winter weather precluded doing any work until the spring of 2020. (Testimony of C.R.)
37. C.R. asked Respondent for a start date on the job or for a return of the downpayment. (Testimony of C.R.)
38. Respondent never began working on the Rapid River project during 2020. He made a number of different excuses to C.R. including poor weather and sick workers. (Testimony of C.R.)
39. Respondent eventually repaid C.R. \$3,000 for the downpayment in January 2021. (Testimony of C.R.)

### **Conclusions of Law**

The role of an administrative law judge in a contested case hearing on a complaint under the Code is to submit a determination of findings of fact and conclusions of law to the appropriate body in a hearing report. See MCL 339.513.

The Bureau has the burden of proving by a preponderance of evidence that Respondent has violated the Code as alleged in the Formal Complaint. Proof by a preponderance of the evidence “requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence.” *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985).

### ***Count I***

In Count I, the Bureau alleged that Respondent’s conduct constituted abandonment, without legal excuse, of a contract, construction project, or operation engaged in or undertaken by the licensee in violation of MCL 339.2411(2)(a). As set forth above in the Findings of Fact, Respondent promised to undertake six different construction projects consisting of two projects for Homeowner 3 and one each for Homeowners 1, 2, 4, and 5. Respondent entered into contracts and collected downpayments for each project. Respondent completed 60% of the work for Homeowner 2, did only a small portion of the work for Homeowner 3, and did no work at all for Homeowners 1, 4, and 5. Respondent returned the \$7,500 downpayment made by Homeowner 4 four months after agreeing to start the project. Respondent returned the \$3,000 downpayment made by Homeowner 5 14 months after agreeing to start the project. Although Homeowners 1, 2, and 3 all asked Respondent to return their downpayments, Respondent never did so despite having entered into agreements with each of these homeowners in 2021 or 2022. These facts demonstrate that Respondent abandoned all six construction projects before their completion.

Respondent's various excuses for not completing work that he promised to do—some of which may have been valid reasons for delay—do not excuse the length of time that he retained funds without doing any of the promised work.

The Bureau has established Count I by a preponderance of the evidence.

### ***Count II***

In Count II, the Bureau alleged that Respondent's conduct constituted diversion of funds received for the completion of specific construction projects for other purposes in MCL 339.2411(2)(b). As set forth above in the Findings of Fact, Respondent received payments in the amounts of \$4,500 from Homeowner 1 (downpayment), \$13,700 from Homeowner 2 (full contract price), and \$14,500 from Homeowner 3 (two downpayments). Respondent received these funds in 2021 and 2022, when he agreed to complete construction projects for these homeowners. Respondent never completed the projects and never returned any of these funds. Respondent only did a small portion of the work for Homeowner 3 and never started the work for Homeowner 1. Respondent's act of retaining these funds for his own purposes—whatever they may have been—without doing the contracted-for work constituted diversion in violation of MCL 339.2411(2)(b). The Bureau has established Count II by a preponderance of the evidence.

### ***Count III***

In Count III, the Bureau alleged that Respondent violated MCL 339.604(b) by practicing "fraud, deceit, or dishonesty" in practicing his profession. As set forth above in the Findings of Fact, Respondent was dishonest with all five homeowners. In each case he promised to do construction work in return for payment. In each case he accepted funds, and, in each case, he failed to start or complete the work for which he was paid. Although Respondent eventually returned downpayments to Homeowners 4 and 5, Respondent has wrongfully retained the funds received from Homeowners 1, 2, and 3. The act of accepting money in return for a promise to complete construction projects, and then retaining the funds without ever commencing or completing the promised projects is fraudulent, deceitful, and dishonest. The Bureau has established Count III by a preponderance of the evidence.

### ***Count IV***

In Count IV, the Bureau alleged that Respondent violated MCL 339.604(d) by demonstrating a "lack of good moral character," which means "the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner." See MCL 339.104(8); MCL 338.41(1). The facts amply demonstrate that Respondent does not have a propensity to serve the public in a fair, honest, and open manner. Respondent took a \$4,500 downpayment from Homeowner 1 in 2021 and then never did the promised work and never returned the money. Respondent received \$13,700 from

Homeowner 2 in 2022, only completed 60% of the work (in a substandard and unacceptable manner) and never returned the money. Respondent received \$14,500 from Homeowner 3, did only a small amount of the promised work, and never returned the money. Respondent received a \$7,500 downpayment from Homeowners 4 and retained it for four months (until receiving a demand letter from an attorney) without ever doing any of the promised work. Respondent received a \$3,000 downpayment from Homeowners 5 in 2019 and retained it until 2021 without ever doing any of the promised work. The Bureau has established Count IV by a preponderance of the evidence.

### ***Count V***

In Count V, the Bureau alleged that Respondent violated MCL 339.604(e) by committing an act of gross negligence while practicing his occupation. The Occupational Code does not define “gross negligence,” but the commonly understood definition of the term in Michigan law is “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” See *Xu v Hou*, 257 Mich App 263, 268-269 (2003). The evidence offered at the hearing did not support a conclusion that Respondent acted with a substantial lack of concern for whether an injury resulted from his actions. The Bureau has not established Count V.

### ***Count VI***

In Count VI, the Bureau alleged that Respondent violated MCL 339.604(e) by demonstrating incompetence, meaning “a departure from, or a failure to conform to, minimal standards of acceptable practice for an occupation.” See MCL 339.104(9). The facts described above that demonstrate Respondent’s lack of propensity to serve the public in a fair, honest, and open manner also demonstrate incompetence. For all five homeowners, Respondent promised to do work that he never commenced or completed. For all five homeowners, Respondent received and retained (at least temporarily for Homeowners 4 and 5) funds for work that he never performed.

In the one circumstance alleged in the Formal Complaint where Respondent undertook to perform more than a minor portion of the work he promised to do, his work for Homeowner 2 was so inadequate that all of it must be redone by another contractor: One of the walls he installed subsequently fell over. The wiring he had added in the walls was not connected to any power supply. One structural wall was built in the wrong spot to support the floor. The floor joists that Respondent installed were not attached properly. The walls he installed that are still standing must be removed to redo the electrical work. And Respondent used the wrong drywall material. The Bureau has established Count VI by a preponderance of the evidence.

**Restitution & Sanctions Request**

Counsel for the Bureau requested that Respondent be ordered to pay restitution. As set forth above in the Findings of Fact, Respondent's actions (1) caused Homeowner 1 (M.P.) to lose a \$4,500 downpayment paid for work that was never done, (2) caused Homeowner 2 (S.F.) to expend \$13,700 on a home improvement project that was only 60% completed and was done so poorly that it all must be redone, and (3) caused Homeowner 3 (K.B.) to lose \$14,500 in downpayments for work that was not done and caused Homeowner 3 (K.B.) to expend \$1,200 to protect her house from weather damage resulting from Respondent's unfinished work.

Counsel for the Bureau (1) requested that Respondent's license be revoked because he poses a risk to the public, and (2) requested that the maximum fine be imposed.

**DECISION**

The Bureau has proven the allegations of fact, and the violations of the Code, as alleged in Counts I to IV and Count VI of the Formal Complaint dated June 22, 2023. The Bureau has not established Count V.

**RECOMMENDED SANCTIONS**

For Respondent's violation of the Occupational Code, the Tribunal recommends that Respondent pay restitution as follows:

Homeowner 1 (M.P.):	<b>\$4,500.00</b>
Homeowner 2 (S.F.):	<b>\$13,700.00</b>
Homeowner 3 (K.B.):	<b>\$15,700.00</b>

The Tribunal further recommends (1) that Respondent be fined \$10,000, which is the maximum allowable under MCL 339.602(e), (2) that Respondent's license as a residential builder be revoked, and (3) that the Board of Residential Builders and Maintenance & Alteration Contractors impose any other sanctions that may be deemed appropriate.



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**Paul Smith**  
**Administrative Law Judge**



23-023200

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**Notice to Agency to Provide MOAHR with Subsequent Agency or Court Orders**

The state agency that is a party to this matter, and/or referred this matter to MOAHR, shall serve MOAHR with any subsequent orders entered as a result of this ALJ's decision or proposed decision, including but not limited to the agency's final order, order to remand the matter to MOAHR for further proceedings, or order on appeal, as soon as practicable following entry of the order to:

Michigan Office of Administrative Hearings and Rules, General Adjudication, by **email (preferred)** to: [MOAHR-GA@michigan.gov](mailto:MOAHR-GA@michigan.gov); **or by regular mail** to: MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195.

See: Mich Admin Code, R 792.10120(2)(i).

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF CONSTRUCTION CODES  
BOARD OF RESIDENTIAL BUILDERS AND MAINTENANCE AND  
ALTERATION CONTRACTORS

In the Matter of

Brent Papineau  
Residential Builder  
License No. 21-01-205695

Complaint No. 2300204  
(Consolidated with file nos. 2000613,  
2200892, 2201005, 2201043)

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FORMAL COMPLAINT

Assistant Attorney General Sharon S. Park, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Complainant), files this formal complaint against Brent Papineau (Respondent), 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. Respondent is currently a licensed residential builder pursuant to the Code doing business as B & J Roofing or B & J Construction.
3. After receiving complaints against Respondent, the Bureau investigated the allegations of the complaints pursuant to section 502 of the Code.
4. Section 2411(2)(a) of the Code subjects a licensee to sanction for abandonment without legal excuse of a contract, construction project, or operation engaged in or undertaken by the licensee.

5. Section 2411(2)(b) of the Code subjects a licensee to sanction for diversion 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. Section 604(b) of the Code subjects a licensee to sanction for practicing fraud, deceit, or dishonesty in practicing an occupation.

7. Section 604(d) of the Code subjects a licensee to sanction for demonstrating a lack of good moral character, which is defined in MCL 338.41 to mean “the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.”

8. Section 604(e) of the Code subjects a licensee to sanction for committing an act of gross negligence in practicing an occupation.

9. Section 604(g) of the Code subjects a licensee to sanction for committing an act which demonstrates incompetence.

10. Section 514 of the Code authorizes the Board to assess penalties against licensees based on an administrative law hearings examiner’s hearing report.

11. Section 505 of the Code permits the summary suspension of a license to practice an occupation where an imminent threat to the public health, safety and welfare exists.

## FACTUAL ALLEGATIONS

### **Homeowner 1**

12. On April 1, 2021, M.P.<sup>1</sup> entered into an agreement with Respondent to remove the existing roof and install a metal roof on her home located in Brampton, Michigan.

13. On April 6, 2021, M.P. paid Respondent a \$4,500.00 down payment to order materials.

14. Respondent never began the work on M.P.'s roof and ceased all communication. Respondent did not return the down payment to M.P.

### **Homeowner 2**

15. On February 22, 2022, Respondent entered into an agreement with S.F. to finish the basement of her home located in Escanaba, Michigan.

16. The agreement included installation of new floor joists, new basement jacks, four new walls including drywall, and new doors.

17. S.F. paid Respondent \$13,700.00 in down payments for him to order materials prior to starting construction.

18. Respondent worked on the basement February 28, 2022, through March 14, 2022, but never completed the project.

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<sup>1</sup> Initials used to protect confidentiality.

### **Homeowner 3**

19. On August 26, 2022, K.B. entered into an agreement with Respondent to replace an existing roof with a metal roof and to replace siding on House 1 located in Escanaba, Michigan.

20. Respondent also entered into an agreement with K.B. to replace the roof on House 2 located in, Rapid River, Michigan.

21. K.B. paid Respondent a total of \$14,500.00 in down payments to order materials prior to starting construction on both houses.

22. Respondent worked on House 1 for only one day. He removed the old siding but never returned to complete the work.

23. Respondent began work on the roof of House 2 but never returned to complete the work causing weather damage to the property.

24. Because K.B. had concerns Respondent would not finish the work on either house, she requested a refund of the down payment. Respondent agreed to refund the down payment but never paid K.B.

### **Homeowner 4**

25. On July 15, 2022, I.K. entered into an agreement with Respondent to remove an existing roof and install a metal roof on her home in Rock, Michigan.

26. I.K. paid Respondent a \$7,500.00 down payment to order materials prior to starting the work.

27. As of October 6, 2022, Respondent never began work on the homeowner's roof. I.K. requested a refund of the down payment but it was never returned.

### **Homeowners 5**

28. C.R., acting as the power of attorney for her parents, E.W and B.W, entered into an agreement with Respondent on September 18, 2019, to replace the roof on the garage of her parent's home in Rapids River, Michigan.

29. C.R. paid Respondent a \$3,000.00 down payment on September 30, 2019, with the balance to be paid when construction was completed.

30. Over the next year, C.R. and her siblings attempted to contact Respondent by phone or text message for a start date. Numerous start dates were given but Respondent never began construction.

31. On or about November 20, 2020, Respondent indicated he would refund the \$3,000.00 down payment.

32. At some point after December 3, 2020, Respondent refunded the \$3,000.00 down payment to C.R.

### COUNT I

33. 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, in violation of section 2411(2)(a) of the Code.

COUNT II

34. Respondent's conduct as described above constitutes diversion 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, in violation of section 2411(2)(b) of the Code.

COUNT III

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

COUNT IV

36. Respondent's conduct as described above constitutes a lack of good moral character, as defined in MCL 338.41, in violation of section 604(d) of the Code.

COUNT V

37. Respondent's conduct as described above constitutes gross negligence in practicing an occupation, in violation of section 604(e) of the Code.

COUNT VI

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

WHEREFORE, Complainant, Department of Licensing and Regulatory Affairs, hereby commences proceedings pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq.* and the Occupational Code 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 by regular mail to the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, P.O. Box 30254, Lansing, MI 48909 or by email to [LARA-BCC-RBS-Compliance@michigan.gov](mailto:LARA-BCC-RBS-Compliance@michigan.gov), with a copy mailed to the undersigned assistant attorney general.

FURTHER, Complainant requests that pending the hearing and final determination Respondent's license to practice as a residential builder in the State of Michigan continue to be summarily suspended pursuant to section 92 of the Administrative Procedures Act of 1969 and section 505 of the Occupational Code for the reason that, based upon the allegations set forth herein, an imminent threat to the public health, safety, or welfare exists which requires emergency action.

Respectfully submitted,

/s/ Sharon S. Park  
Sharon S. Park (P71693)  
Assistant Attorney General  
Licensing & Regulation Division  
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Dated: June 22, 2023