

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

CLINT LAMANEN
License No. 242000229

Complaint No. 2300121
Docket No. 23-022101

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 June 25, 2024, and considered the Finding of Facts and Conclusions of Law in the Hearing Report of Chris Johnson, Administrative Law Judge, dated October 11, 2023.

IT IS ORDERED that for violating MCL 339.604 (b), (c), (d), (e), (g), (h), and (l); MCL 339.2411 (2)(a), (c), (h), and (l); Mich Admin Code R 338.1533(1); and Mich Admin Code R 338.1551(2), 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 **2300121**.

IT IS FURTHER ORDERED that Respondent shall pay RESTITUTION in the amount of FOUR HUNDRED FIFTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-FIVE dollars and 28/100 (\$457,835.28) 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.

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

JEREMY ZWIERNIK
License No. 21-05-216803

Complaint No. 2000075
Docket No. 24-001318

Respondent

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 June 25, 2024, and considered the Finding of Facts and Conclusions of Law in the Hearing Report of Lauren G. VanSteel, Administrative Law Judge, dated April 12, 2024.

IT IS ORDERED that for violating MCL 339.604 (c) and (h); and Mich Admin Code R 338.1525 (3), Respondent shall pay a FINE in the amount of ONE HUNDRED dollars and 00/100 (\$100.00) 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 **2000075**.

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 27th day of June, 2024.

BY: *Felicia Badger*

Felicia Badger, Manager
Enforcement Section
Bureau of Construction Codes

Effective date: 6/27/2024

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

BUREAU OF CONSTRUCTION CODES,
Petitioner

v

JEREMY ZWIERNIK,
Respondent

Docket No.: 24-001318

Case No.: 2000075

**Agency: Bureau of Construction
Codes**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

CERTIFICATION OF RECORD

I, Bailey Fowler, 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, April 15, 2024.

<u>Date</u>	<u>Document</u>
1. 04/12/24	Hearing Report
2. 03/04/24	Petitioner's Exhibits 1 - 6 Offered and Admitted
3. 03/01/24	Order Reassigning Case
4. 02/22/24	Petitioner's Witness List and Exhibit List
5. 02/14/24	Returned mail, Notice of Telephone Hearing
6. 02/05/24	Returned mail, Notice of Telephone Hearing
7. 01/17/24	Notice of Telephone Hearing with Proof of Service

8. 01/16/24 Request for Hearing

B. Fowler

Bailey Fowler
Michigan Office of Administrative
Hearings and Rules



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

IN THE MATTER OF:

Docket No.: 24-001318

**BUREAU OF CONSTRUCTION CODES,
Petitioner**

Case No.: 2000075

v

**Bureau of
Construction Codes**

**JEREMY ZWIERNIK,
Respondent**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

**Issued and entered
this 12th day of April 2024
by: Lauren G. VanSteel
Administrative Law Judge**

HEARING REPORT

Procedural History

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Occupational Code, MCL 339.101 *et seq.* (Code). A Formal Complaint (Complaint) was issue on behalf of the Department of Licensing and Regulatory Affairs – Bureau of Construction Codes (Petitioner) on November 8, 2023. The Complaint alleges that Jeremy Zwiernik (Respondent) violated provisions of the Code and administrative rules promulgated thereunder.

On January 16, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a Request for Hearing in this matter. The case was assigned to ALJ Thomas A. Halick. On January 17, 2024, a Notice of Telephone Hearing was sent to all parties scheduling a hearing by telephone teleconference on March 4, 2024. On February 22, 2024, Petitioner filed a Witness List, Exhibit List, and proposed exhibits. This matter was reassigned to the undersigned ALJ, per an Order Reassigning Case entered on March 1, 2024.

The hearing proceeded by telephone as scheduled on March 4, 2024. The undersigned ALJ presided over the hearing. Jason Werkema, Assistant Attorney General, appeared on behalf of Petitioner. Respondent failed to appear for the hearing.

The undersigned ALJ waited 15 minutes from the scheduled start time for hearing before going on the record. The undersigned ALJ also found that Respondent had been properly served with the Notice of Telephone Hearing. No request for adjournment had been filed. The hearing proceeded in Respondent's absence pursuant to Section 72(1) of the Administrative Procedures Act (APA), MCL 24.272(1).

Section 72(1) of the APA provides as follows:

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.

Further, the undersigned ALJ granted Petitioner's motion for a default ruling against Respondent pursuant to Section 78(2) of the APA, MCL 24.278(2), and Rule 134 of the uniform hearing rules, Mich Admin Code, R 792.10134.

Section 78(2) of the APA provides as follows:

Sec. 78. (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. (Emphasis supplied).

Rule 134 of the uniform hearing rules, Mich Admin Code, R 792.10134, provides as follows:

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. (Emphasis added).

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. Mich Admin Code, R 792.10134.

The following exhibits were offered by Petitioner during the hearing and were admitted into evidence with no objection:

1. Petitioner's Exhibit 1 – Statement of Complaint, dated January 27, 2020.
2. Petitioner's Exhibit 2 – Email from Metal Masters Construction, dated March 13, 2020.
3. Petitioner's Exhibit 3 – Payment Authorization Form, dated October 18, 2019.
4. Petitioner's Exhibit 4 – Certification of Licensure pertaining to Jeremy Zwiernik dated July 11, 2023.
5. Petitioner's Exhibit 5 – Addendum and Contract for [REDACTED].
6. Petitioner's Exhibit 6 – Bureau of Construction Code Analyst Notes.

Respondent failed to appear for the hearing and did not submit any proposed exhibits.

The record was closed at the conclusion of the hearing on March 4, 2024.

Issue and Applicable Law

The issue presented is whether Respondent violated the Code provision and administrative rules as alleged in the Formal Complaint, dated November 8, 2023.

Section 601 of the Code, MCL 339.601, states in relevant part:

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

* * *

Section 604 of the Code, MCL 339.604, provides in pertinent part:

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:

* * *

(c) Violates a rule of conduct of an occupation.

* * *

(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 338.1525 states, in relevant part:

(1) A salesperson shall be licensed under a person holding a license as a builder or contractor but shall not be licensed under more than one builder or contractor during the same period of time.

* * *

(3) Upon approval, the department shall issue a license and an identification card containing the name and business address of the salesperson. The card shall be carried by the salesperson and shall be shown as identification to every prospective customer. A salesperson shall not commence work until the builder or contractor under whom the salesperson is licensed receives the salesperson's license and identification card from the department.

Section 602 of the Code, MCL 339.602, provides the following:

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) In the case of a person licensed or registered under this act and except as otherwise provided in this act, an administrative fine to be paid to the department of not more than \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

Findings of Fact

Based on the default entered in this matter and the admitted exhibits, the following facts are found to be established:

1. The Board of Residential Builders and Maintenance and Alteration Contractors is an administrative agency established under Article 24 of the Code.
2. Respondent possesses a lapsed license to practice as a residential builder salesperson pursuant to the Code. He first obtained this license on November 2, 2017, under residential builder's license of Erie Construction Mid-West, Inc. The license lapsed on May 31, 2020, and remained lapsed as of the date of hearing. [Pet. Exh. 4].
3. Respondent worked as a residential builder salesperson for Metal Masters Construction LLC¹ from at least October 2019 until at least December 2019. [Pet. Exh. 1 and Exh. 3].
4. During the time Respondent worked for Metal Masters, Respondent was licensed as a residential builder salesperson for Erie Construction Mid-West Inc. and did not possess a salesperson license under the residential builder's license of Metal Masters Construction LLC. [Pet. Exh. 4].
5. In and around October 2019, Respondent negotiated a contract on behalf of Metal Masters Construction LLC to install a metal roof on the home of R.A.² and D.D., which is in St. Johns, Michigan. [Pet. Exh. 1, Exh. 3, and Exh. 5].
6. Respondent continued to negotiate and correspond on behalf of Metal Masters Construction LLC with homeowners R.A. and D.D. until December 2019. [Pet. Exh. 1 and Exh. 6].
7. Respondent failed to present his residential builder salesperson license to homeowners R.A. and D.D. [Pet. Exh. 1].
8. On or about February 6, 2020, Petitioner received a complaint against Metal Masters Construction LLC and Respondent from R.A. and D.D. relating the conduct detailed above. [Pet. Exh. 1].

¹ Metal Masters Construction LLC is a licensed residential builder company. Their license number is 21-02-198374

² Initials used to protect homeowner confidentiality.

9. After receiving the complaint, Petitioner investigated the allegations of the complaint pursuant to section 502 of the Code. [Pet. Exh. 6]

Conclusions of Law

Petitioner bears the burden of proving, by a preponderance of evidence, that Respondent violated the Code, as alleged in the Formal Complaint, dated November 8, 2023. As the Michigan Supreme Court has stated, “[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 evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

Additionally, the principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan’s Michigan Pleading and Practice 2nd ed.*, Section 60.48, p 230. A default having been granted against Respondent, the factual and legal allegations set forth in the Formal Complaint are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true and proven. *Smith v Lansing School Dist*, 428 Mich 248; 406 NW2d 825 (1987).

By virtue of the default ruling, Petitioner has established its burden of proving, by a preponderance of the evidence, the factual and legal allegations in the Formal Complaint.

Accordingly, the undersigned concludes the following:

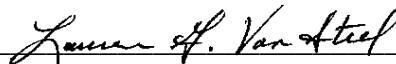
- 1) Respondent’s conduct, as described above, constitutes failing to display a residential builder salesperson license and commencing work prior to receipt of a residential salesperson license under the company in which the salesperson is employed, contrary to Mich Admin Code, R 338.1525(3), in violation of section 604(c) of the Code, as alleged in Count I of the Formal Complaint.
- 2) Respondent’s conduct, as described above, constitutes failing to display a residential builder salesperson license and commencing work prior to receipt of a residential salesperson license under the company in which the salesperson is employed, contrary to Mich Admin Code, R 338.1525(3), in violation of section 604(h) of the Code, as alleged in Count II of the Formal Complaint.

Decision

Based upon the above findings of fact and conclusions of law, as well as the default ruling entered in favor of Petitioner and against Respondent, it has been established that Respondent violated the Occupational Code and administrative rules promulgated thereunder as alleged in Count I and Count II of the Formal Complaint. Therefore, Respondent is subject to sanction under MCL 339.602.

Recommendation as to Sanctions:

As requested by Petitioner, the undersigned ALJ recommends that the Board impose a sanction that the Board deems appropriate pursuant to MCL 339.602.



Lauren G. VanSteel
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; **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

JEREMY ZWIERNIK
Residential Builder Salesperson
License No. 21-05-216803

Complaint No. 2000075

_____ /

FORMAL COMPLAINT

Assistant Attorneys General Jason W. Werkema and Jennifer Fitzgerald, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Complainant), file this formal complaint against Respondent, Jeremy Zwiernik, 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 possesses a lapsed residential builder salesperson license pursuant to the Code. At all relevant times, Respondent served as a residential builder salesperson for Metal Masters Construction LLC, which has a related formal complaint in case number 2000076.
3. After receiving a complaint against Respondent, the Bureau investigated the allegations of the complaint pursuant to section 502 of the Code.
4. Section 604(c) of the Code subjects a licensee to sanction for violation of a rule of conduct of an occupation.

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

6. Mich Admin Code, R 338.1525(1) provides that “[a] salesperson shall be licensed under a person holding a license as a builder or contractor but shall not be licensed under more than one builder or contractor during the same period of time.”

7. Mich Admin Code, R 338.1525(3) provides that “[u]pon approval, the department shall issue a license and an identification card containing the name and business address of the salesperson. The card shall be carried by the salesperson and shall be shown as identification to every prospective customer. A salesperson shall not commence work until the builder or contractor under whom the salesperson is licensed receives the salesperson’s license and identification card from the department.”

8. 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

9. From at least October 2019 and until at least December 2019, Respondent worked as a residential builder salesperson for Metal Masters Construction LLC¹.

¹ Metal Masters Construction LLC is a licensed residential builder company. Their license number is 21-02-198374.

10. During the aforementioned time period, Respondent was licensed as a residential builder salesperson for Erie Construction Mid-West Inc. and did not possess a salesperson license under the residential builder's license of Metal Masters Construction LLC.

11. In and around October 2019, Respondent negotiated a contract on behalf of Metal Masters to install a metal roof on homeowners R.A.² and D.D.'s St. Johns, Michigan home.

12. Respondent continued to negotiate and correspond on behalf of Metal Masters with homeowners R.A. and D.D. until December 2019.

13. Respondent failed to present his residential builder salesperson license to homeowners R.A. and D.D.

COUNT I

14. Respondent's conduct as described above constitutes failing to display a residential builder salesperson license and commencing work prior to receipt of a residential salesperson license under the company in which the salesperson is employed, contrary to Mich Admin Code, R 338.1525(3), in violation of section 604(c) of the Code.

COUNT II

15. Respondent's conduct as described above constitutes failing to display a residential builder salesperson license and commencing work prior to receipt of a residential salesperson license under the company in which the salesperson is

² Initials used to protect homeowner confidentiality.

employed, contrary to Mich Admin Code, R 338.1525(3), in violation of section 604(h) 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, with a copy mailed to the undersigned assistant attorney general.

Respectfully submitted,

/s/ Jason W. Werkema
Jason W. Werkema (P80350)
Jennifer Fitzgerald (P60109)
Assistant Attorneys General
Licensing & Regulation Division
P.O. Box 30758
Lansing, MI 48909
Telephone: (517) 335-7569
Facsimile: (517) 241-1997

Dated: November 8, 2023

LF: 2023-0380447-B/Zwiernik, Jeremy, 2000075 (Res Bldr Salesperson)/Formal Complaint – 2023-11-08

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

NICHOLAS ANTON KLUPP
License No. 21-01-195283

Complaint No. 2000074
Docket No. 23-035027

AND

METAL MASTERS CONSTRUCTION LLC
License No. 21-02-198374

Complaint No. 2000076
Docket No. 23-035026

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 June 25, 2024, and considered the Finding of Facts and Conclusions of Law in the Hearing Report of Lindsay Wilson, Administrative Law Judge, dated January 31, 2024.

IT IS ORDERED that for violating MCL 339.604 (b), (c), (d), (e), (g), and (h); MCL 339.2411 (2)(a), (b), (c), (e), (h) and (m); Mich Admin Code R 338.1551 (2); and Mich Admin Code R 338.1525 (5), 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 **2000074 & 2000076**.

IT IS FURTHER ORDERED that the REVOCATION of the licenses held by Respondents under the jurisdiction of the Board shall continue to remain effective. 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 Respondents 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 27th day of June, 2024

BY: *Felicia Badger* _____

Felicia Badger, Manager
Enforcement Section
Bureau of Construction Codes

Effective date: 6/27/2024 _____

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

V

**NICHOLAS ANTON KLUPP,
RESPONDENT**

Docket No.: 23-035027

Case No.: 2000074

**Agency: Bureau of Construction
Codes**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

CERTIFICATION OF RECORD

I, Debbie Sterba, 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, April 10, 2024.

<u>Date</u>	<u>Document</u>
1. 01/31/24	Hearing Report
2. 01/29/24	Petitioner's Exhibits 1-11, Offered and Admitted at Hearing
3. 01/17/24	Petitioner's Witness and Exhibit Lists (Attachments not made part of Certification of Record)
4. 12/13/23	Notice of Hearing with Proof of Service
5. 12/11/23	Request for Hearing



Debbie Sterba

Debbie Sterba
Michigan Office of Administrative
Hearings and Rules

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

V

**METAL MASTERS CONSTRUCTION,
LLC,
RESPONDENT**

Docket No.: 23-035026

Case No.: 2000076

**Agency: Bureau of Construction
Codes**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

CERTIFICATION OF RECORD

I, Debbie Sterba, 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, April 10, 2024.

<u>Date</u>	<u>Document</u>
1. 01/31/24	Hearing Report
2. 01/29/24	Petitioner's Exhibits 1-11, Offered and Admitted at Hearing
3. 01/17/24	Petitioner's Witness and Exhibit Lists (Attachments not made part of Certification of Record)
4. 12/13/23	Notice of Hearing with Proof of Service
5. 12/08/23	Request for Hearing



Debbie Sterba

Debbie Sterba
Michigan Office of Administrative
Hearings and Rules

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

IN THE MATTER OF:

Docket No.: 23-035026

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

Case No.: 2000076

V

**Agency: Bureau of
Construction Codes**

**METAL MASTERS CONSTRUCTION, LLC,
RESPONDENT**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

_____/

IN THE MATTER OF:

Docket No.: 23-035027

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

Case No.: 2000074

V

**Agency: Bureau of
Construction Codes**

**NICHOLAS ANTON KLUPP,
RESPONDENT**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

_____/

**Issued and entered
this 31st day of January 2024
by: Lindsay Wilson
Administrative Law Judge**

HEARING REPORT

Procedural History

On October 27, 2023, a Formal Complaint was filed by the Department of Licensing and Regulatory Affairs (LARA), Bureau of Construction Codes (Bureau), Petitioner, against Metal Masters Construction, LLC, and Nicholas Anton Klupp, Respondents, which alleged one or more violations of the Michigan Occupational Code (Code), MCL 339.101 *et seq.*, and the Administrative Rules (Rules) promulgated thereunder.

On December 8, 2023, these matters were referred to the Michigan Office of Administrative Hearings and Rules (MOAHR) to schedule a contested case hearing.

On December 13, 2023, MOAHR issued a Notice of Telephone Hearing, scheduling the hearing to convene on January 29, 2024.

On January 29, 2024, the hearing commenced as scheduled. Administrative Law Judge (ALJ) Lindsay Wilson presided. Jason Werkema, Assistant Attorney General, appeared on behalf of Petitioner.

Neither the Respondents, nor an attorney or authorized representative appeared on the Respondents' behalf. MOAHR did not receive any documentation or a telephone call from Respondents requesting an adjournment. Finally, Respondents were properly served with notice of these proceedings at their last known address and email address of record with Petitioner.

After the undersigned waited over 20 minutes from the scheduled hearing time, the hearing proceeded in Respondents' absence pursuant to Section 72(1) of the Administrative Procedures Act (APA) and Rule 134 of the Administrative Hearing Rules, Mich Admin Code, R 792.10134.

Petitioner further moved for a decision by default against Respondents pursuant to Section 78(2) of the APA, MCL 24.278(2), and Rule 134. These statutory provisions and rules state as follows:

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 24.272(1) (emphasis added.)

Sec. 78. (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. MCL 24.278(2) (emphasis added.)

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.

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. 2015 Mich Admin Code, R 792.10134 (emphasis added.)

Petitioner's motion for default was granted pursuant to Section 78(2) of the APA and Rule 134 and is affirmed in this Hearing Report. Because of the default, the factual and legal allegations contained in the Formal Complaint dated October 27, 2023, are deemed true and proven. The above-captioned matters were consolidated for hearing purposes.

The following exhibits were offered by Petitioner and admitted into evidence:

1. Petitioner's Exhibit P-1 is a Statement of Complaint from R.A¹. and supporting documentation received by Petitioner on February 6, 2020.
2. Petitioner's Exhibit P-2 is a Notice to Respondent Nicholas Klupp, dated February 7, 2020.
3. Petitioner's Exhibit P-3 is a Notice to Respondent Metal Masters Construction, dated February 7, 2020.
4. Petitioner's Exhibit P-4 is an emailed response to complaint from Respondent Metal Masters Construction, dated March 13, 2020.
5. Petitioner's Exhibit P-5 is a Contract and Addendum between R.A. and Metal Masters Construction, LLC.
6. Petitioner's Exhibit P-6 is copies of photographs of the construction project.
7. Petitioner's Exhibit P-7 is a Building Complaint Form from Clinton County Community Development Department, dated October 31, 2019; a Clinton County Building Department Correction Notice, dated December 19, 2019; Letters from Clinton County Community Development to Metal Masters Construction LLC, dated July 10, 2020, June 1, 2020, and March 31, 2020; Single Inspection Permit for PB190554; and email sent from Clinton County's field inspector to Petitioner, dated July 7, 2023.

¹ Initials are used to protect confidentiality.

8. Petitioner's Exhibit P-8 is a Building Inspection Report, with an inspection date of December 19, 2019.
9. Petitioner's Exhibit P-9 is Petitioner's Case Summary notes.
10. Petitioner's Exhibit P-10 is a Certification of Licensure for Jeremy Zwiernik, as of July 11, 2023.
11. Petitioner's Exhibit P-11 is a Certification of Licensure for Respondent Metal Masters Construction LLC, as of July 6, 2023.

Respondents did not appear for the hearing and thus did not offer any exhibits into evidence.

The record was closed at the conclusion of the hearing on January 29, 2024.

Issues and Applicable Law

The issue presented is whether Respondents have violated the Code and/or Rules as alleged in the Formal Complaint. More specifically, this matter concerns whether Respondents have violated Sections 604(b); 604(c); 604(d); 604(e); 604(g); 604(h); 2411(2)(a); 2411(2)(b); 2411(2)(c); 2411(2)(e); 2411(2)(h); and 2411(2)(m) of the Code, and Mich Admin Code R 338.1551(2) and R 338.1525(5), as alleged in Counts I through XII of the October 27, 2023 Formal Complaint. The referenced Code and Rules sections provide as follows:

MCL 339.604 states, in pertinent part:

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

* * *

MCL 338.41 defines "good moral character" as follows:

Sec. 1.

- (1) The phrase "good moral character", when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in a statute of this state or administrative rules promulgated under a statute of this state, means the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner.

MCL 339.2411(2) 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.
 - (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.

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

* * *

- (e) A willful violation of the building laws of this state or of a political subdivision of this state.

* * *

- (h) Failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential structure that is prefabricated, preassembled, precut, packaged, or shell housing.

* * *

- (m) Workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

* * *

Mich Admin Code R 338.1551(2) provides:

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.

* * *

Mich Admin Code R 338.1525(5) provides:

When a licensed salesperson transfers employment from the builder or contractor under which he or she is presently licensed to a new employer, the new employer shall submit to the department an application for transfer of the salesperson's license to the new employer.

* * *

Additionally, MCL 339.514 provides, in pertinent part:

- (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.

* * *

MCL 339.602 states:

Sec. 602.

A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

- (a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.
- (e) In the case of a person licensed or registered under this act and except as otherwise provided in this act, an administrative fine to be paid to the department of not more than \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

Findings of Fact

Based upon the evidence submitted by way of a default entered against Respondents, together with the exhibits admitted in the record, the undersigned finds the following facts by a preponderance of evidence:

1. The Board of Residential Builders and Maintenance and Alteration Contractors (Board) is an administrative agency established by the Code.
2. Respondent Metal Masters Construction LLC (Respondent Metal Masters) was licensed as a Residential Builder Company from June 10, 2010 to May 31, 2020. The license lapsed on May 31, 2020 and the license is currently in inactive status. [Pet. Exh. P-11].
3. At all relevant times to the Formal Complaint, Respondent Nicholas Klupp (Respondent Klupp) served as the qualifying officer for Respondent Metal Masters. [Pet. Exh. P-11].
4. As its qualifying officer, Respondent Klupp acted on behalf of Respondent Metal Masters and is responsible for exercising supervision and control of its construction operations to secure full compliance with Article 24 of the Code and the rules promulgated thereunder. [Pet. Exh. P-11].

5. In October 2019, the Homeowners, R.A. and D.D., contracted with Respondent Metal Masters to replace their existing roof with a metal roof on their St. John's, Michigan home. As part of the agreement, R.A. and D.D. agreed to pay Respondent Metal Masters \$15,000.00 upon project completion. [Pet. Exh. P-5].
6. On or about October 18, 2019, Jeremy Zwiernik, an employee of Respondent Metal Masters, presented R.A. and D.D. with loan documents for signature and advised R.A. and D.D. not to date the documents. [Pet. Exh. P-1, p. 3; Pet. Exh. P-9, p. 1].
7. R.A. and D.D. signed the documents even though work had yet to commence and they were unaware that the documents they were signing indicated that the project was completed satisfactorily. [Pet. Exh. P-1, p. 3; Pet. Exh. P-9, p. 1].
8. Work commenced on the project on or about October 18, 2019, and was completed on or about October 22, 2019. Throughout the project, the R.A. and D.D. advised Respondent Metal Masters of several issues regarding the quality of the work. [Pet. Exh. P-1, pp. 3-5; Pet. Exh. P-9, p. 1].
9. Upon completion of the project, several dents were visible in the roof and metal went beyond the roof's edge without the proper finishing. [Pet. Exh. P-1, p. 4; Pet. Exh. P-6, pp. 2-12].
10. On or about October 23, 2019, as part of the contract, Respondent Metal Masters' gutter installation crew arrived to install new gutters. However, the crew could not install the gutters due to the improper installation of the metal roof. [Pet. Exh. P-1, p. 5].
11. On or about October 30, 2019, Jeremy Zwiernik advised R.A. and D.D. that the dents in the roof were due to failing to replace the OSB boards on the roof prior to the installation. The contract included the installation of new OSB boards on the roof. [Pet. Exh. P-1, pp. 5-6; Pet. Exh. P-5, p. 2; Pet. Exh. P-9, p. 1].
12. During the aforementioned discussion, Jeremy Zwiernik confirmed that the new roof needed to be removed and replaced. [Pet. Exh. P-1, p. 6].
13. On or about October 31, 2019, R.A. and D.D. filed a complaint with the Clinton County Community Development Building Department, at which time it was discovered that Respondent Metal Masters never obtained a building permit prior to commencing work as required by the local building code, despite including permits as part of the original contract. [Pet. Exh. P-7, pp. 1, 6; Pet. Exh. P-9, p. 1].

14. On or about November 1, 2019, Respondent Metal Masters applied for a building permit, indicating that the metal roof was to be removed and replaced with a new metal roof. [Pet. Exh. P-7, pp. 1, 6; Pet. Exh. P-9, p. 1].
15. On or about December 19, 2019, the Clinton County Building Department inspected the roof and cited Respondent Metal Masters for two violations of the Michigan Residential Code, for failing to:
 - a. Provide fasteners in corner drip steel per manufacturer's installation requirements, contrary to R905.10.4; and
 - b. Provide manufacture documentation on steel overhang length, contrary to R904.1.

[Pet. Exh. P-7, pp. 2, 6-7; Pet. Exh. P-9, p. 2].
16. On or about January 4, 2020, Respondent Nicholas Klupp surveyed the project, apologized for the shoddy workmanship, and advised R.A. and D.D. that he would personally oversee the removal of the roof and the installation of a new metal roof. [Pet. Exh. P-1, p. 7].
17. To date, Respondents have failed to replace R.A. and D.D.'s roof, address the Michigan Residential Code violations, or refund any funds received for the project. [Pet. Exh. P-1, p. 7; Pet. Exh. P-9, p. 2].
18. The aforementioned contract was negotiated and signed on behalf of Respondent Metal Masters by Jeremy Zwiernik, an employee of Respondent Metal Masters. Respondent Metal Masters never sought transfer of Jeremy Zwiernik's residential builder and maintenance and alteration salesperson license from his previous employer as required by Mich Admin Code, R 338.1525(5). [Pet. Exh. P-9, p. 2; Pet. Exh. P-10].
19. On January 27, 2020, R.A. submitted a Statement of Complaint against Respondents. [Pet. Exh. P-1, pp. 1-2].
20. On February 7, 2020, Petitioner sent a Notice to Respondents (Notices), informing Respondents that a Statement of Complaint had been filed. [Pet. Exh. P-2; Pet. Exh. P-3].
21. After receiving notice of the complaint from the Bureau on February 7, 2020, Respondents failed to respond within 15 days as required by Mich Admin Code, R 338.1551(2). [Pet. Exh. P-4].

Conclusions of Law

Petitioner bears the burden of proving, by a preponderance of evidence, that Respondents violated the Code, as alleged in the Formal Complaint. As the Michigan Supreme Court has stated, “[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 evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

Additionally, the principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan’s Michigan Pleading and Practice 2nd ed.*, Section 60.48, p 230. A default having been granted against Respondents, the factual and legal allegations set forth in the Formal Complaint, are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true and proven. *Smith v Lansing School Dist*, 428 Mich 248; 406 NW2d 825 (1987).

By virtue of the default, Petitioner has established its burden of proving, by a preponderance of the evidence, the facts alleged in the Formal Complaint.

Accordingly, the undersigned concludes the following:

- 1) Respondents’ conduct, as described above, constitutes fraud, deceit, or dishonesty in practicing an occupation, in violation of MCL 339.604(b), as alleged in Count I of the Formal Complaint.
- 2) Respondents’ conduct, as described above, constitutes a lack of good moral character, in violation of MCL 339.604(d), as alleged in Count II of the Formal Complaint.
- 3) Respondents’ conduct, as described above, demonstrates an act of gross negligence in practicing an occupation, in violation of MCL 339.604(e), as alleged in Count III of the Formal Complaint.
- 4) Respondents’ conduct, as described above, demonstrates incompetence in violation of MCL 339.604(g), as alleged in Count IV of the Formal Complaint.
- 5) Respondents’ conduct, as described above, constitutes a failure to respond within 15 days, contrary to Mich Admin Code, R 338.1551(2), in violation of MCL 339.604(c) and MCL 339.604(h), as alleged in Count V of the Formal Complaint.

- 6) Respondents' conduct, as described above, constitutes a failure to submit to the department an application for transfer of the salesperson's license to the new employer, contrary to Mich Admin Code, R 338.1525(5), in violation of MCL 339.604(c) and MCL 339.604(h), as alleged in Count VI of the Formal Complaint.
- 7) Respondents' 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 MCL 339.2411(2)(a), as alleged in Count VII of the Formal Complaint.
- 8) Respondents' 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 MCL 339.2411(2)(b), as alleged in Count VIII of the Formal Complaint.
- 9) Respondents' conduct, as described above, constitutes a failure to account for or remit money coming into the person's possession that belongs to others, in violation of MCL 339.2411(2)(c), as alleged in Count IX of the Formal Complaint.
- 10) Respondents' conduct, as described above, constitutes a willful violation of the building laws of this state or of a political subdivision of this state, in violation of MCL 339.2411(2)(e), as alleged in Count X of the Formal Complaint.
- 11) Respondents' conduct, as described above, constitutes failing to deliver to the purchaser the entire agreement of the parties, in violation of MCL 339.2411(2)(h), as alleged in Count XI of the Formal Complaint.
- 12) Respondents' conduct, as described above, constitutes workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, in violation of MCL 339.2411(2)(m), as alleged in Count XII of the Formal Complaint.

Decision

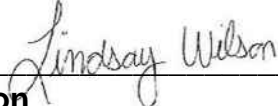
Petitioner has proven the allegations of fact and violations of the Code and/or administrative rules as alleged in the Formal Complaint dated October 27, 2023.

Recommended Sanctions

At the conclusion of the hearing, Petitioner's representative requested that the Board impose a \$10,000.00 fine on Respondents. Petitioner further requested that the Board revoke Respondents' licenses.

The undersigned ALJ recommends that the Board impose the following penalties pursuant to MCL 339.602:

1. Imposition of a fine the Board may impose on Respondents, jointly and severally, in the amount of \$10,000.00, or another amount deemed appropriate by the Board in accordance with MCL 339.602(e).
2. Revocation of all licenses held by Respondents under the jurisdiction of the Board until the fine has been paid in accordance with the Board's final order under MCL 339.602(d).
3. Any other penalty the Board deems appropriate pursuant to MCL 339.602.



Lindsay Wilson
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; or **by regular mail** to: MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195.

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

Metal Masters Construction LLC
Residential Builder Company
License No. 2102198374

Complaint No. 2000076

AND

Nicholas Anton Klupp
Individual Residential Builder
License No. 2101195283

Complaint No. 2000074

_____ /

FORMAL COMPLAINT

Assistant Attorneys General Jason W. Werkema and Jennifer Fitzgerald, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Complainant), file this formal complaint against Respondents Metal Masters Construction LLC and Nicholas A. Klupp (referred to individually by name or collectively as “Respondents”), 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. Respondents are each currently licensed residential builders pursuant to the Code. At all relevant times, Respondent Klupp served as the qualifying officer for Respondent Metal Masters.

3. After receiving a complaint against Respondents, the Bureau investigated the allegations of the complaint pursuant to section 502 of the Code.

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

5. Section 604(c) of the Code subjects a licensee to sanction for violation of a rule of conduct of 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(e) of the Code subjects a licensee to sanction for committing an act of gross negligence in practicing an occupation.

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

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

10. Mich Admin Code, R 338.1551(2) provides that a “licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification for the complaint.”

11. Mich Admin Code, R 338.1525(5) provides that “[w]hen a licensed salesperson transfers employment from the builder or contractor under which he or she is presently licensed to a new employer, the new employer shall submit to the department an application for transfer of the salesperson’s license to the new employer.”

12. 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.

13. 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.

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

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

16. Section 2411(2)(h) of the Code subjects a licensee to sanction for failing to deliver to the purchaser the entire agreement of the parties including any finance

or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale or distribution of a residential structure that is prefabricated, preassembled, precut, packaged, or shell housing.

17. Section 2411(2)(m) of the Code subjects a licensee to sanction for workmanship not meeting the standards of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

18. 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

19. In October 2019, homeowners R.A.¹ and D.D. contracted with Respondent Metal Masters to replace their existing roof with a metal roof on their St. John's, Michigan home. As part of the agreement, R.A. and D.D. agreed to pay Respondent Metal Masters \$15,000 upon project completion.

20. On or about October 18, 2019, Jeremy Zwiernik, an employee of Respondent Metal Masters, presented the homeowners with loan documents for signature and advised R.A. and D.D. not to date the documents.

¹ Designation used to protect confidentiality.

21. R.A. and D.D. signed the documents even though work had yet to commence and unaware that the documents they were signing indicated that the project was completed satisfactorily.

22. Work commenced on the project on or about October 18, 2019, and was completed on or about October 22, 2019. Throughout the project, the homeowners advised Respondent Metal Masters of several issues regarding the quality of the work.

23. Upon completion of the project, several dents were visible in the roof and metal went beyond the roof's edge without the proper finishing.

24. On or about October 23, 2019, as part of the contract, Respondent Metal Masters' gutter installation crew arrived to install new gutters. However, the crew could not install the gutters due to the improper installation of the metal roof.

25. On or about October 30, 2019, Jeremy Zwiernik advised the homeowners that the dents in the roof were due to failing to replace the OSB boards on the roof prior to the installation. The contract included the installation of new OSB boards on the roof.

26. During the aforementioned discussion, Jeremy Zwiernik confirmed that the new roof needed to be removed and replaced.

27. On or about October 31, 2019, the homeowners filed a complaint with the Clinton County Community Development Building Department, at which time it was discovered that Respondent Metal Masters never obtained a building permit

prior to commencing work as required by the local building code, despite including permits as part of the original contract.

28. On or about November 1, 2019, Respondent Metal Masters applied for a building permit, indicating that the metal roof was to be removed and replaced with a new metal roof.

29. On or about December 19, 2019, the Clinton County Building Department inspected the roof and cited Respondent Metal Masters for two violations of the Michigan Residential Code, for failing to:

- a. Provide fasteners in corner drip steel per manufacturer's installation requirements. R905.10.4; and
- b. Provide manufacture documentation on steel overhang length.
R904.1

30. On or about January 4, 2020, Respondent Nicholas Klupp surveyed the project, apologized for the shoddy workmanship, and advised the homeowners R.A. and D.D. that he would personally oversee the removal of the roof and the installation of a new metal roof.

31. To date, Respondents have failed to replace homeowner R.A. and D.D.'s roof, address the Michigan Residential Code violations, or refund any funds received for the project.

32. The aforementioned contract was negotiated and signed on behalf of Respondent Metal Masters by Jeremy Zwiernik, an employee of Respondent Metal Masters. Respondent Metal Masters never sought transfer of Jeremy Zwiernik's

residential builder and maintenance and alteration salesperson license from his previous employer as required by Mich Admin Code, R 338.1525(5).

33. As its qualifying officer, Respondent Nicholas Klupp acted on behalf of Respondent Metal Masters and is responsible for exercising supervision and control of its construction operations to secure full compliance with Article 24 of the Occupational Code.

34. After receiving notice of the complaint from the Bureau on February 7, 2020, Respondents failed to respond within 15 days as required by Mich Admin Code, R 338.1551(2).

COUNT I

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

COUNT II

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

COUNT III

37. Respondents' conduct as described above demonstrates an act of gross negligence in practicing an occupation, in violation of section 604(e) of the Code.

COUNT IV

38. Respondents' conduct as described above demonstrates incompetence, in violation of section 604(g) of the Code.

COUNT V

39. Respondents' conduct as described above constitutes the failure to respond within 15 days, contrary to Mich Admin Code, R 338.1551(2), in violation of sections 604(c) and (h) of the Code.

COUNT VI

40. Respondents' conduct as described above constitutes failure to submit to the department an application for transfer of the salesperson's license to the new employer, contrary to Mich Admin Code, R 338.1525(5), in violation of sections 604(c) and (h) of the Code.

COUNT VII

41. Respondents' conduct as described above constitutes abandonment without legal excuse of a construction project engaged in or undertaken by the licensee, in violation of section 2411(2)(a) of the Code.

COUNT VIII

42. Respondents' 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 IX

43. Respondents' conduct as described above constitutes a failure 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 X

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

COUNT XI

45. Respondents' conduct as described above constitutes failing to deliver to the purchaser the entire agreement of the parties, in violation of section 2411(2)(h) of the Code.

COUNT XII

46. Respondents' conduct as described above constitutes workmanship not meeting the standards of the Michigan residential code as promulgated under the Stille-DeRossett-Hale single state construction code act, in violation of section 2411(2)(m) 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, with a copy mailed to the undersigned assistant attorneys general.

Respectfully submitted,

/s/ Jason W. Werkema

Jason W. Werkema (P80350)
Jennifer Fitzgerald (P60109)
Assistant Attorneys General
Licensing & Regulation Division
P.O. Box 30758
Lansing, MI 48909
Telephone: (517) 335-7569
Facsimile: (517) 241-1997

Dated: October 27, 2023

LF: 2023-0380448-B/Metal Masters Construction LLC, 2000076/Formal Complaint – 2023-10-27

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

NICHOLAS ANTON KLUPP
License No. 21-01-195283

Complaint No. 2000616
Docket No. 23-035692

AND

METAL MASTERS CONSTRUCTION LLC
License No. 21-02-198374

Complaint No. 2000617
Docket No. 23-035028

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 June 25, 2024, and considered the Finding of Facts and Conclusions of Law in the Hearing Report of Lindsay Wilson, Administrative Law Judge, dated January 31, 2024.

IT IS ORDERED that for violating MCL 339.604 (b), (c), (d), (e), (g), (h), and (l); MCL 339.2411 (2)(a), (b), (c), and (h); 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 **2000616 & 2000617**.

IT IS FURTHER ORDERED that Respondents are jointly and severally liable to pay RESTITUTION in the amount of EIGHTEEN THOUSAND FOUR HUNDRED dollars and 00/100 (\$18,400.00) 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 the REVOCATION of the licenses held by Respondents under the jurisdiction of the Board shall continue to remain effective. 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 Respondents 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 27th day of June, 2024.

BY: *Felicia Badger*

Felicia Badger, Manager
Enforcement Section
Bureau of Construction Codes

Effective date: 6/27/2024

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

V

**NICHOLAS ANTON KLUPP,
RESPONDENT**

Docket No.: 23-035692

Case No.: 2000616

**Agency: Bureau of Construction
Codes**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

CERTIFICATION OF RECORD

I, Debbie Sterba, 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, April 10, 2024.

<u>Date</u>	<u>Document</u>
1. 01/31/24	Hearing Report
2. 01/29/24	Petitioner's Exhibits 1-9, Offered and Admitted at Hearing
3. 01/17/24	Petitioner's Witness and Exhibit Lists (Attachments not made part of Certification of Record)
4. 01/02/24	Returned Mail, Notice of Telephone Hearing
5. 12/21/23	Notice of Hearing with Proof of Service
6. 12/08/23	Request for Hearing



Debbie Sterba

Debbie Sterba

Michigan Office of Administrative
Hearings and Rules

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

Docket No.: 23-035028

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

Case No.: 2000617

V

**Agency: Bureau of Construction
Codes**

**METAL MASTERS CONSTRUCTION,
LLC,
RESPONDENT**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

_____ /

CERTIFICATION OF RECORD

I, Debbie Sterba, 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, April 10, 2024.

<u>Date</u>	<u>Document</u>
1. 01/31/24	Hearing Report
2. 01/29/24	Petitioner's Exhibits 1-9, Offered and Admitted at Hearing
3. 01/17/24	Petitioner's Witness and Exhibit Lists (Attachments not made part of Certification of Record)
4. 12/13/23	Notice of Hearing with Proof of Service
5. 12/11/23	Request for Hearing



Debbie Sterba

Debbie Sterba
Michigan Office of Administrative
Hearings and Rules

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

IN THE MATTER OF:

Docket No.: 23-035028

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

Case No.: 2000617

V

**Agency: Bureau of
Construction Codes**

**METAL MASTERS CONSTRUCTION, LLC,
RESPONDENT**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

_____/

IN THE MATTER OF:

Docket No.: 23-035692

**BUREAU OF CONSTRUCTION CODES,
PETITIONER**

Case No.: 2000616

V

**Agency: Bureau of
Construction Codes**

**NICHOLAS ANTON KLUPP,
RESPONDENT**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

_____/

**Issued and entered
this 31st day of January 2024
by: Lindsay Wilson
Administrative Law Judge**

HEARING REPORT

Procedural History

On October 4, 2023, a Formal Complaint was filed by the Department of Licensing and Regulatory Affairs (LARA), Bureau of Construction Codes (Bureau), Petitioner, against Metal Masters Construction, LLC, and Nicholas Anton Klupp, Respondents, which alleged one or more violations of the Michigan Occupational Code (Code), MCL 339.101 *et seq.*, and the Administrative Rules (Rules) promulgated thereunder.

On December 8, 2023, these matters were referred to the Michigan Office of Administrative Hearings and Rules (MOAHR) to schedule a contested case hearing.

On December 13, 2023, MOAHR issued a Notice of Telephone Hearing, scheduling the hearing to convene on January 29, 2024.

On January 29, 2024, the hearing commenced as scheduled. Administrative Law Judge (ALJ) Lindsay Wilson presided. Jason Werkema, Assistant Attorney General, appeared on behalf of Petitioner. Homeowner R.J.¹ appeared and testified as a witness on behalf of Petitioner.

Neither the Respondents, nor an attorney or authorized representative appeared on the Respondents' behalf. MOAHR did not receive any documentation or a telephone call from Respondents requesting an adjournment. Finally, the undersigned found that Respondents were properly served with notice of these proceedings at their last known address and email address of record with Petitioner.

After the undersigned waited over 30 minutes from the scheduled hearing time, the hearing proceeded in Respondents' absence pursuant to Section 72(1) of the Administrative Procedures Act (APA) and Rule 134 of the Administrative Hearing Rules, Mich Admin Code, R 792.10134.

Petitioner further moved for a decision by default against Respondents pursuant to Section 78(2) of the APA, MCL 24.278(2), and Rule 134. These statutory provisions and rules state as follows:

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 24.272(1) (emphasis added.)

Sec. 78. (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. MCL 24.278(2) (emphasis added.)

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

¹ Initials are used to protect confidentiality.

may issue a default order or other dispositive order which shall state the grounds for the order.

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. 2015 Mich Admin Code, R 792.10134 (emphasis added.)

Petitioner's motion for default was granted pursuant to Section 78(2) of the APA and Rule 134 and is affirmed in this Hearing Report. Because of the default, the factual and legal allegations contained in the Formal Complaint dated October 4, 2023, are deemed true and proven. The above-captioned matters were consolidated for hearing purposes.

The following exhibits were offered by Petitioner and admitted into evidence:

1. Petitioner's Exhibit P-1 is a copy of a Contract between R.J. and Respondent Metal Masters Construction, dated December 13, 2019.
2. Petitioner's Exhibit P-2 is a copy of an Addendum, dated December 21, 2019.
3. Petitioner's Exhibit P-3 is a Certification of Licensure for Respondent Metal Masters Construction LLC, as of July 6, 2023.
4. Petitioner's Exhibit P-4 is copies of deposited checks from R.J. made payable to Respondent Metal Masters, dated December 28, 2019 and December 13, 2019.
5. Petitioner's Exhibit P-5 is a Residential Builders- Statement of Complaint from R.J. against Respondent Metal Masters Construction, dated December 1, 2020.
6. Petitioner's Exhibit P-6 is a Certification of Licensure for Richard Macumber, as of July 11, 2023.
7. Petitioner's Exhibit P-7 is a copy of a letter to R.J. from Kenockee Township and Building Inspection Report, dated February 18, 2021.
8. Petitioner's Exhibit P-8 is a Notice to Respondent Metal Masters Construction LLC, dated December 8, 2020.

9. Petitioner's Exhibit P-9 is a Notice to Respondent Nicholas Klupp, dated December 8, 2020.

Respondents did not appear for the hearing and thus did not offer any exhibits into evidence.

The record was closed at the conclusion of the hearing on January 29, 2024.

Issues and Applicable Law

The issue presented is whether Respondents have violated the Code and/or Rules as alleged in the Formal Complaint. More specifically, this matter concerns whether Respondents have violated Sections 604(b); 604(c); 604(d); 604(e); 604(g); 604(h); 604(i); 2411(2)(a); 2411(2)(b); 2411(2)(c); and 2411(2)(h) of the Code, and Mich Admin Code R 338.1551(2), as alleged in Counts I through X of the October 4, 2023 Formal Complaint. The referenced Code and Rules sections provide as follows:

MCL 339.604 states, in pertinent part:

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.
- (c) Violates a rule of conduct of 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.

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

* * *

- (l) Aids or abets another person in the unlicensed practice of an occupation.

* * *

MCL 338.41 defines "good moral character" as follows:

Sec. 1.

- (1) The phrase "good moral character", when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in a statute of this state or administrative rules promulgated under a statute of this state, means the propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner.

MCL 339.2411(2) 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.
 - (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.

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

* * *

- (h) Failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential structure that is prefabricated, preassembled, precut, packaged, or shell housing.

* * *

Mich Admin Code R 338.1551(2) provides:

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.

* * *

Additionally, MCL 339.514 provides, in pertinent part:

- (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.

* * *

MCL 339.602 states:

Sec. 602.

A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

- (a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.
- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.
- (e) In the case of a person licensed or registered under this act and except as otherwise provided in this act, an administrative fine to be paid to the department of not more than \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

Findings of Fact

Based upon the evidence submitted by way of a default entered against Respondents, together with the exhibits admitted in the record, the undersigned finds the following facts by a preponderance of evidence:

1. The Board of Residential Builders and Maintenance and Alteration Contractors (Board) is an administrative agency established by the Code.
2. Respondent Metal Masters Construction LLC (Respondent Metal Masters) was licensed as a Residential Builder Company from June 10, 2010 to May 31, 2020. The license lapsed on May 31, 2020 and the license is currently in inactive status. [Pet. Exh. P-3].
3. At all relevant times to the Formal Complaint, Respondent Nicholas Klupp (Respondent Klupp) served as the qualifying officer for Respondent Metal Masters. [Pet. Exh. P-3].
4. As its qualifying officer, Respondent Klupp acted on behalf of Respondent Metal Masters and is responsible for exercising supervision and control of its construction operations to secure full compliance with Article 24 of the Code and the rules promulgated thereunder. [Pet. Exh. P-3].
5. In December 2019, the homeowner, R.J., contracted with Respondent Metal Masters to replace the roof on a pole barn located on the property of R.J.'s Avoca, Michigan home. R.J. paid Respondent Metal Masters an initial deposit of \$14,500.00 on or about December 13, 2019, for the project. [Pet. Exh. P-1; Pet. Exh. P-4, p. 3; R.J. Hearing Testimony].
6. On or about December 21, 2019, an Addendum was signed by R.J. to amend the project to include the addition of a lean-to to the pole barn and R.J. paid Respondent an additional deposit of \$3,900 for the project modification, for a total deposit amount paid of \$18,400.00. [Pet. Exh. P-2; Pet. Exh. P-4, p. 1; R.J. Hearing Testimony].
7. In and around September 2020, Respondent Metal Masters' staff advised R.J. that work would commence on the pole barn in October 2020. [Pet. Exh. P-5].
8. Respondent Metal Masters did not commence work in October 2020 and R.J. was unable to reach any staff at Respondent Metal Masters as their phones were disconnected and their office was vacant. [Pet. Exh. P-5].

9. To date, despite receiving the aforementioned deposits, Respondent Metal Masters has not: completed work on R.J.'s pole barn, provided him any materials, responded to any of his attempts of contact, or refunded any of the money R.J. paid to Respondent Metal Masters. [Pet. Exh. P-5; R.J. Hearing Testimony].
10. The aforementioned contract and addendums were negotiated and signed on behalf of Respondent Metal Masters by Richard Macumber, an employee of Respondent Metal Masters. Richard Macumber did not and has never possessed a salesperson license as required by the Code. [Pet. Exh. P-6].
11. On December 1, 2020, R.J. submitted a Statement of Complaint with Petitioner against Respondent Metal Masters. [Pet. Exh. P-5].
12. On December 8, 2020, Petitioner sent a Notice to Respondents (Notices), informing Respondents that a Statement of Complaint had been filed against them. [Pet. Exh. P-8; Pet. Exh. P-9].
13. Respondents failed to respond to the Department after receiving notice of the complaint within 15 days as required by Mich Admin Code, R 338.1551(2).

Conclusions of Law

Petitioner bears the burden of proving, by a preponderance of evidence, that Respondents violated the Code, as alleged in the Formal Complaint. As the Michigan Supreme Court has stated, “[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 evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

Additionally, the principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan’s Michigan Pleading and Practice 2nd ed.*, Section 60.48, p 230. A default having been granted against Respondents, the factual and legal allegations set forth in the Formal Complaint, are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true and proven. *Smith v Lansing School Dist*, 428 Mich 248; 406 NW2d 825 (1987).

By virtue of the default, Petitioner has established its burden of proving, by a preponderance of the evidence, the facts alleged in the Formal Complaint.

Accordingly, the undersigned concludes the following:

- 1) Respondents' conduct, as described above, constitutes fraud, deceit, or dishonesty in practicing an occupation, in violation of MCL 339.604(b), as alleged in Count I of the Formal Complaint.
- 2) Respondents' conduct, as described above, constitutes a lack of good moral character, in violation of MCL 339.604(d), as alleged in Count II of the Formal Complaint.
- 3) Respondents' conduct, as described above, demonstrates an act of gross negligence in practicing an occupation, in violation of MCL 339.604(e), as alleged in Count III of the Formal Complaint.
- 4) Respondents' conduct, as described above, demonstrates incompetence in violation of MCL 339.604(g), as alleged in Count IV of the Formal Complaint.
- 5) Respondents' conduct, as described above, demonstrates aiding or abetting another person in the unlicensed practice of an occupation, in violation of MCL 339.604(l), as alleged in Count V of the Formal Complaint.
- 6) Respondents' conduct, as described above, constitutes a failure to respond, contrary to Mich Admin Code, R 338.1551(2), in violation of MCL 339.604(c) and MCL 339.604(h), as alleged in Count VI of the Formal Complaint.
- 7) Respondents' 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 MCL 339.2411(2)(a), as alleged in Count VII of the Formal Complaint.
- 8) Respondents' 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 MCL 339.2411(2)(b), as alleged in Count VIII of the Formal Complaint.
- 9) Respondents' conduct, as described above, constitutes a failure to account for or remit money coming into the person's possession that belongs to others, in violation of MCL 339.2411(2)(c), as alleged in Count IX of the Formal Complaint.

10) Respondents' conduct, as described above, constitutes failing to deliver to the purchaser the entire agreement of the parties, in violation of section MCL 339.2411(2)(h), as alleged in Count X of the Formal Complaint.

Decision

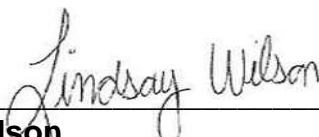
Petitioner has proven the allegations of fact and violations of the Code and/or administrative rules as alleged in the Formal Complaint dated October 4, 2023.

Recommended Sanctions

At the conclusion of the hearing, Petitioner's representative requested that the Board impose a \$10,000.00 fine on Respondents. Petitioner further requested that the Board order restitution be paid to the Complainant in the amount of \$18,400.00 and that Respondents' licenses be revoked until the restitution and fines have been paid.

The undersigned ALJ recommends that the Board impose the following penalties pursuant to MCL 339.602:

1. That Respondents, jointly and severally, be required to pay restitution to Complainant in the amount of \$18,400.00.
2. Imposition of a fine the Board may impose on Respondents, jointly and severally, in the amount of \$10,000.00, or another amount deemed appropriate by the Board in accordance with MCL 339.602(e).
3. Revocation of all licenses held by Respondents under the jurisdiction of the Board until the restitution and fine amounts are paid in accordance with the Board's final order under MCL 339.602(d).
4. Any other penalty the Board deems appropriate pursuant to MCL 339.602.



Lindsay Wilson
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; **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

Metal Masters Construction LLC
Residential Builder Company
License No. 21-02-198374

Complaint No. 2000617

AND

Nicholas Anton Klupp
Individual Residential Builder
License No. 21-01-195283

Complaint No. 2000616

_____ /

FORMAL COMPLAINT

Assistant Attorneys General Jason W. Werkema and Jennifer Fitzgerald, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Complainant), files this formal complaint against Respondents Metal Masters Construction LLC and Nicholas A. Klupp (referred to individually by name or collectively as “Respondents”), 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. Respondents are each currently licensed residential builders pursuant to the Code. At all relevant times, Respondent Klupp served as the qualifying officer for Respondent Metal Masters.

3. After receiving a complaint against Respondents, the Bureau investigated the allegations of the complaint pursuant to section 502 of the Code.

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

5. Section 604(c) of the Code subjects a licensee to sanction for violation of a rule of conduct of 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(e) of the Code subjects a licensee to sanction for committing an act of gross negligence in practicing an occupation.

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

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

10. Section 604(l) of the Code subjects a licensee to sanction who aids or abets another person in the unlicensed practice of an occupation.

11. Mich Admin Code, R 338.1551(2) provides that a “licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification for the complaint.”

12. 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.

13. 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.

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

15. Section 2411(2)(h) of the Code subjects a licensee to sanction for failing to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale or distribution of a residential structure that is prefabricated, preassembled, precut, packaged, or shell housing.

16. 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

17. In December 2019, homeowner, R.J.¹, contracted with Respondent Metal Masters to replace the roof on a pole barn located on the property of R.J.'s Avoca, Michigan home. R.J. paid Respondent Metal Masters an initial deposit of \$14,500 on or about December 13, 2019 for the project.

18. On or about December 21, 2019, an addendum was signed by homeowner R.J. to amend the project to include the addition of a lean-to to the pole barn and R.J. paid Respondent an additional deposit of \$3,900 for the project modification.

19. In and around September 2020, Respondent Metal Masters' staff advised R.J. that work would commence on the pole barn in October 2020.

20. Respondent Metal Masters did not commence work in October 2020 and R.J. was unable to reach any staff at Respondent Metal Masters as their phones were disconnected and their office was vacant.

21. To date, despite receiving the aforementioned deposits, Respondent Metal Masters has not: completed work on R.J.'s pole barn, provided him any materials, responded to any of his attempts of contact, or refunded any of the money R.J. paid it.

22. The aforementioned contract and addendums were negotiated and signed on behalf of Respondent Metal Masters by Richard Macumber, an employee of Respondent Metal Masters. Richard Macumber did not, and has never possessed a salesperson license as required by the Code.

¹ Designation used to protect confidentiality.

23. As its qualifying officer, Respondent Nicholas Klupp acted on behalf of Respondent Metal Masters and is responsible for exercising supervision and control of its construction operations to secure full compliance with Article 24 of the Occupational Code.

24. Respondents failed to respond to the Department after receiving notice of the complaint within 15 days as required by Mich Admin Code, R 338.1551(2).

COUNT I

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

COUNT II

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

COUNT III

27. Respondents' conduct as described above demonstrates an act of gross negligence in practicing an occupation, violation of section 604(e) of the Code.

COUNT IV

28. Respondents' conduct as described above demonstrates incompetence, in violation of section 604(g) of the Code.

COUNT V

29. Respondents' conduct as described above demonstrates aiding or abetting another person in the unlicensed practice of an occupation, in violation of section 604(l) of the Code.

COUNT VI

30. Respondents' conduct as described above constitutes the failure to respond, contrary to Mich Admin Code, R 338.1551(2), in violation of sections 604(c) and (h) of the Code.

COUNT VII

31. Respondents' conduct as described above constitutes abandonment without legal excuse of a construction project engaged in or undertaken by the licensee, in violation of section 2411(2)(a) of the Code.

COUNT VIII

32. Respondents' 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 IX

33. Respondents' conduct as described above constitutes a failure 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 X

34. Respondents' conduct as described above constitutes failing to deliver to the purchaser the entire agreement of the parties, in violation of section 2411(2)(h) 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, with a copy mailed to the undersigned assistant attorneys general.

Respectfully submitted,

/s/ Jason W. Werkema
Jason W. Werkema (P80350)
Jennifer Fitzgerald (P60109)
Assistant Attorneys General
Licensing & Regulation Division
P.O. Box 30758
Lansing, MI 48909
Telephone: (517) 335-7569
Facsimile: (517) 241-1997

Dated: October 4, 2023

LF: 2023-0380460-B/Metal Masters Construction LLC, 2000617/Formal Complaint – 2023-10-04

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

RONDO & SONS BUILDERS INC.
License No. 261900133
Respondent

Complaint No. 2200136

and

RYAN LEE RONDO
Qualifying Officer
License No. 2101204723
Respondent

Complaint No. 338415

Consent Order and Stipulation

CONSENT ORDER

On February 9, 2024, the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Department) issued a First Amended Formal Complaint alleging that Rondo & Sons Builders Inc. and Ryan Lee Rondo, Qualifying Officer (Respondents), violated the Occupational Code. Respondents have agreed to a Consent Order and Stipulation with the Department that resolves the violations alleged in the First Amended Formal Complaint.

Respondents admit acting contrary to: Mich Admin Code, R 338.1533(1)-(2), and Mich Admin Code, R 338.1551(5), in violation of MCL 339.604(h).

The Michigan Board of Residential Builders and Maintenance and Alteration Contractors (Board) has reviewed this Consent Order and the Stipulation and agrees that the public interest is served by resolution of the First Amended Formal Complaint as set forth herein.

Therefore, IT IS FOUND that Respondents acted contrary to Mich Admin Code, R 338.1533(1)-(2), and R 338.1551(5), in violation of MCL 339.604(h). Respondents acted in

violation of the Occupational Code, constituting grounds for the assessment of a penalty, or penalties, as prescribed in MCL 339.602(a)-(h).

Accordingly, IT IS ORDERED that:

Respondents shall pay a FINE in the amount of \$1,000.00, jointly and severally, payable to the State of Michigan, within 180 days of the effective date of the Order (mailing date).

The Fine shall be paid by bank cashier check (check) or money order, made payable to the State of Michigan, and the check or money order shall clearly display the Complaint Numbers: 2200136 & 338415. The Fine shall be mailed to the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Enforcement Section, Sanction Monitoring, P.O. Box 30255, Lansing, MI 48909.

Respondents shall pay RESTITUTION to the Homeowner, in the amount of \$21,000.00, jointly and severally, within 90 days of the effective date of the Order (mailing date). The Restitution must be paid directly to the Homeowner. The Department will provide Respondents with the name and address of the Homeowner. Respondents must provide to the Department acceptable documented proof of the payment of Restitution to the Homeowner: Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Residential Builder Section, Sanction Monitoring, P.O. Box 30254, Lansing, MI 48909.

Failure to comply with the terms of this Order shall result in a Suspension of all licenses held by Respondents under Article 24 of the Occupational Code, and in the denial of any license renewal or relicensure until compliance with the Consent Order is achieved. If the licenses are Suspended, and the compliance with the terms of the Consent Order is achieved after the license expiration date, Respondent must apply for relicensure in accordance with MCL 339.411.

If Respondents violate any term or condition set forth in this Order, Respondents shall be in violation of MCL 339.604(k) of the Occupational Code and may be subject to further disciplinary action.

IT IS FURTHER ORDERED that this Order shall be effective on the date of mailing to Respondents.

MICHIGAN BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE AND ALTERATION CONTRACTORS

By: 

Chairperson (or Designee)

Date: 6-25-24

STIPULATION

1. The Department and Respondents agree that the public interest is served by resolution of the First Amended Formal Complaint as set forth in the Consent Order and Stipulation.

2. The Department originally issued a Formal Complaint, dated April 16, 2019, against only Respondent Ryan Rondo. After the issuance of the Formal Complaint, and in connection to the Compliance Conference process, Respondents and the Homeowner raised additional issues, and the Department conducted additional complaint investigation activities. The First Amended Formal Complaint, issued February 9, 2024, added the Company License, and included revisions to factual allegations, alleged violations, and additional exhibits. The Formal Complaint was withdrawn and replaced in full by the First Amended Formal Complaint. Upon receipt of the First Amended Formal Complaint, Respondents elected to participate in the Compliance Conference process. Respondents have determined to resolve the First Amended Formal Complaint via a Consent Order and Stipulation.

3. A Compliance Conference (electronic) was held on May 14, 2024. Ryan Rondo participated on behalf of Respondents; and Lewis Beek participated on behalf of the Homeowner.

4. Respondents contested the violations alleged in the First Amended Formal Complaint; however, Respondents decided to resolve and settle the case rather than proceed to the Formal Administrative Hearing stage.

5. In settlement of the First Amended Formal Complaint, Respondents admit to the following alleged violations of the Occupational Code:

COUNT I

Failure to make certain that all changes to the agreement (contract change orders) shall be in writing, signed by the parties, and a copy provided to the customer, contrary to Mich Admin Code, R 338.1533(1), in violation of MCL 339.604(h).

COUNT II

Failure to make certain that the written agreements (contracts) clearly state the terms of the transaction, including specifications, and when construction is involved, both plans and specifications, including cost, the type and amount of work to be done, and the type and quality of materials to be used, contrary to Mich Admin Code, R 338.1533(2), in violation of MCL 339.604(h).

COUNT III

Failure to maintain standards of construction in compliance with the Michigan Residential Code, contrary to Mich Admin Code, R 338.1551(5), in violation of MCL 339.604(h).

6. Pursuant to discussions and negotiations during the Compliance Conference, and the principle of "settlement and compromise," all other violations, as alleged in Counts IV (fail to account for or remit money); V (willful departure from plans/specifications); VI (willful violation); VII (incompetence, departure from minimal standards); VIII (lack of good moral character – propensity to serve the public in a fair, open, and honest manner); IX (fraud, deceit or dishonesty in the practice of the occupation); are dismissed.

7. Respondent Ryan Rondo was issued a Residential Builder Individual license effective April 25, 2013. The license is currently active (expiration: May 31, 2025). Respondent

Rondo & Sons Builders Inc. was issued a Residential Builder Company license effective December 11, 2019. The license is currently active (expiration: May 31, 2026). There is no history of prior complaints or disciplinary action against either license.

8. Respondents acknowledge that they acted in violation of the Occupational Code, constituting grounds for the assessment of a penalty, or penalties, as prescribed in MCL 339.602(a)-(h).

9. Respondents acknowledge that the associated Consent Order imposes a Fine in the amount of \$1,000.00, due within 180 days after the mailing date of the Order. The Fine shall be paid by bank cashier check or money order, made payable to the State of Michigan, and the check or money order shall clearly display the Complaint Numbers: 2200136 & 338415. The Fine shall be mailed to the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Enforcement Section, Sanction Monitoring, P.O. Box 30255, Lansing, MI 48909.

10. Respondents acknowledge that the associated Consent Order imposes the requirement to pay Restitution to the Homeowner, in the amount of \$21,000.00, due within 90 days after the mailing date of the Order. The Restitution must be paid directly to the Homeowner (not the State of Michigan), by bank cashier check or money order. Payment and mailing instructions will be provided by the Department. Respondents must provide to the Department acceptable documented proof of the payment of Restitution to the Homeowner: Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Enforcement Section, Sanction Monitoring, P.O. Box 30254, Lansing, MI 48909. The Restitution documentation shall clearly display the Complaint Numbers: 2200136 & 338415.

11. Respondents acknowledge that the associated Consent Order provides that if Respondents fail to comply with the payment of the Fine, or the payment of Restitution, within the required timeframes, the Department shall Suspend all licenses held by Respondents under Article 24 of the Occupational Code, and shall deny any license, renewal, or relicensure, until full compliance with the Order is achieved. In the event of failure to comply with the Order after the

expiration of the license, an application for relicensure will be necessary, in accordance with MCL 339.411.

12. Respondents understand that if Respondents' licenses are placed in Suspension status, Respondents must cease all residential construction activities, including marketing, soliciting, contracting for, and performing residential construction work. Further, if Respondents' licenses are placed in Suspension status, Respondents may contract with another licensed residential builder(s) to complete work previously contracted by Respondents.

13. Respondents understand that in the future event that Respondents are found to be in violation of the Occupational Code and associated administrative rules, it is Department policy to impose increased disciplinary sanctions.

14. Respondents agree that William Wilhelm, Administrative Law Specialist, Enforcement Section, Bureau of Construction Codes, may discuss this matter and the Consent Order and Stipulation with the Board, to recommend and support the acceptance of the Consent Order and Stipulation.

15. Respondents understand and intend that by signing this Stipulation, Respondents are waiving the right, pursuant to the Occupational Code, the rules promulgated thereunder, and the Administrative Procedures Act, MCL 24.201 *et seq.*, to require the Department to prove the allegations set forth in the First Amended Formal Complaint by presentation of evidence and legal authority, and Respondents are waiving the right to appear with an attorney and witnesses to present a defense to the allegations.

16. This Consent Order and Stipulation is approved as to form and substance by Respondents and the Department, and may be entered as the Final Order of the Board in this matter.

17. This matter is a public record required to be published and made available to the public pursuant to the Michigan Freedom of Information Act, MCL 15.231 *et seq.*, as well as Section 2411a of the Occupational Code, MCL 339.2411a.

18. This proposal is conditioned upon acceptance by the Board, Respondents, and the Department, expressly reserving the right to further administrative proceedings without prejudice should this Consent Order and Stipulation be rejected.

19. Respondents acknowledge that they have thoroughly read, and understand, the terms of the Consent Order and Stipulation.

AGREED TO BY:

Andrew Brisbo

Digitally signed by Andrew Brisbo
DN: CN = Andrew Brisbo, email =
brisbo@michigan.gov, C = US, O = Bureau
of Construction Codes, OU = Director
Date: 2024.06.04 14:39:47 -0400

Andrew Brisbo, Director
Bureau of Construction Codes
Department of Licensing and Regulatory Affairs

Date: 6/4/2024

AGREED TO BY:



Ryan Lee Rondo, on behalf of Respondents

Date: 6-4-2024

Drafted: William Wilhelm, Administrative Law Specialist, Enforcement Section, Bureau of Construction Codes (5/28/24)

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

RYAN LEE RONDO
Qualifying Officer
Individual License No. 2101204723
Respondent

Complaint No. 338415

and

RONDO & SONS BUILDERS INC.
Company License No. 261900133
Respondent

Complaint No. 2200136

FIRST AMENDED FORMAL COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Complainant (Department), based upon information and belief, files this First Amended Formal Complaint against Respondents alleging violations of the Michigan Occupational Code, MCL 339.101 *et seq.*, as follows:

1. The Department has conducted a complaint investigation pursuant to Article 5 of the Occupational Code, which substantiated evidence of violations of the Occupational Code. MCL 339.502-504; and 508.
2. The Michigan Board of Residential Builders and Maintenance and Alteration Contractors (Board) is an administrative agency established by the Occupational Code. Pursuant to MCL 339.307, 309, 508, and 514, the Board is empowered to impose disciplinary sanctions for violations of the Occupational Code, as set forth in MCL 339.602.

FACTUAL ALLEGATIONS

3. The Department originally issued a Formal Complaint against only Respondent Ryan Rondo, Individual license 21-01-204723, dated April 16, 2019. Subsequently the Homeowner provided additional new evidence, and Rondo & Sons Builders Inc., also obtained a Residential Builder Company license (December 11, 2019). Complaint No. 2200136 was opened against Rondo & Sons Builders Inc. This First Amended Formal Complaint contains additional factual allegations and additional alleged violations of the Occupational Code. The Formal Complaint is hereby withdrawn and replaced in full by this First Amended Formal Complaint.

4. Ryan Rondo was issued a Residential Builder Individual license (21-01-204723), effective April 25, 2013. The application for the Individual license included the Assumed Name (Doing Business As) "Rondo & Sons Builders."¹ The Certificate of Assumed Name was registered in Oscoda County, effective March 11, 2013, and expired March 11, 2018. The license was renewed effective April 4, 2016, March 15, 2019, and March 2, 2022, respectively. The license is currently active with an expiration date of May 31, 2025. The license address of record is 1709 W. Kittle Road, Mio, Michigan 48647. The Verification of Licensure, marked Exhibit 1, is attached and incorporated. The Individual License Application, marked Exhibit 2, is attached and incorporated. Certificate of Assumed Name documentation obtained from Oscoda County, marked Exhibit 3, is attached and incorporated.

5. Rondo & Sons Builders Inc. was issued a Residential Builder Company license (261900133), effective December 11, 2019,² and the license Lapsed (expired) effective June 1, 2022, due to non-renewal. As of February 8, 2024, the Company license remains in Lapsed status. It is believed that Rondo & Sons Builders Inc. has continued to contract for, and perform, regulated Residential Building services, although the Company License is in Lapsed status. Ryan Rondo is designated as the Qualifying Officer of Rondo & Sons Builders Inc. Pursuant to MCL 339.2405(1),

¹ An Assumed Name (Doing Business As) is obtained from a County Clerk, is valid only for an Individual (sole proprietor, not valid for Companies), and is effective for a five (5) year period (must be renewed).

²

Ryan Rondo, as the designated Qualifying Officer of Rondo & Sons Builders Inc., is responsible for exercising the supervision or control of the building or construction operations of Rondo & Sons Builders Inc., necessary to secure full compliance with Article 24 of the Occupational Code and the rules promulgated thereunder. The license address of record is 1709 W. Kittle Road, Mio, Michigan 48647. The Verification of Licensure, marked Exhibit 4, is attached and incorporated.

6. According to business entity records maintained by the Michigan Department of Licensing and Regulatory Affairs, Corporations, Securities and Commercial Licensing Bureau, Rondo & Sons Builders Inc. is a registered Corporation. The name of the corporation was originally Rondo & Sons Inc., which was incorporated July 25, 2017, and name was changed to Rondo & Sons Builders Inc. on November 13, 2019. Rondo & Sons Builders Inc. filed Annual Reports in 2019, 2020, 2021, 2022, and 2023. Ryan Rondo is listed as the Resident Agent, as well as the President, Treasurer, and Director, with an address of 1709 W. Kittle Road, Mio, Michigan 48647. The LARA Business Entity Report, marked Exhibit 5, is attached and incorporated.

7. A Parcel Sketch obtained from Oscoda County depicts the locations of the structures on the subject property, located at [REDACTED] Mio, (Oscoda County). The Parcel Sketch, marked Exhibit 6, is attached and incorporated.

8. On or about February 8, 2018, Respondents presented a Proposal to [REDACTED] [REDACTED] (Homeowner) to perform construction work at his residential property. The Proposal contained the name (letterhead): "Rondo and Sons Builders" and "License # 2101204723." The Proposal consisted of three (3) pages and the scope of work was separated under the following five (5) headings (scopes of work): 1) House Roof; 2) Inside Work; 3) Windows; 4) Lean Too Off Pole Barn; and 5) Garage and Breezeway," with a total project cost of \$64,800.00, including a \$15,000 first draw/deposit. The Homeowner and Respondents subsequently agreed to amend the Proposal, as detailed in several hand-written notations on the Proposal, which deleted the "Lean Too Off Pole Barn" scope (notation: "not doing"), and deleted the "Garage and Breezeway" scope (notation: "different bid"). The amended Proposal, known as the House Roof/Inside Work/Windows Proposal, included

the revised cost of \$34,420.00 (hand-written project total) and the first “draw” was changed from \$15,000.00 to \$10,000.00. The Homeowner signed the amended House Roof/Inside Work/Windows Proposal on or about February 8, 2018. The House Roof/Inside Work/Windows Proposal, marked Exhibit 7, is attached and incorporated.

9. On or about February 8, 2018, the Homeowner paid Respondents the requested \$10,000.00 first draw/deposit, (cash payment) regarding the House Roof/Inside Work/Windows Proposal. The Homeowner subsequently paid the full contract amount of \$34,420.00 via “draws” (cash payments) as requested by Respondents. The House Roof/Inside Work/Windows Proposal contains hand-written notations of the dates of payments, and the amount of payments, including the notation: “Pd in Full.

10. The House Roof/Inside Work/Windows Proposal, consisted of the following summarized scopes of work to be completed:

House Roof:

- Renovation/conversion of a 3/12 pitch shingled roof to a 6/12 steel panel roof.
- Remove shingles and construct new trusses for 6/12 pitch.
- Install new drip edge to the eaves and ice and water shield to all valleys and synthetic roof felt to the remainder of the roof.
- Install 40-year steel roofing with steel valley pans in valleys and all necessary trims and accessories to finish job.
- Gables of house closed in with either regular vinyl siding or shake vinyl siding.
- Reverse gable in front set up to continue out the front for a covered porch to be done in future.
- All vent fixtures on the roof will be extended and new rubber boots installed.
- Replace all soffit and facias on house.

Inside Work:

- Remove roof window in bathroom and filling in hole in ceiling with drywall and insulation. Drywall finished and painted to match room.
- Man cave room removing French doors and filling in the wall and insulating, and installing tongue and groove paneling to the walls.
- If Homeowner has siding that matches the existing siding, install the siding on the outside of this area.

Windows:

- Remove all windows in the house except for new (already replaced window) and one entry door.
- Install new white replacement Alliance double hung, low E, and energy efficient windows with screens.
- 11 windows total to replace and 1 32" full light steel door with storm door with blinds in between the panes of glass.
- All windows will be insulated and trimmed where needed.
- All removed windows will be disposed of.

11. The House Roof/Inside Work/Windows Proposal, contained detailed scopes of work to be performed and the total project cost; however, the Proposal did not include plans and specifications; or the costs for the materials and labor for each scope of work; or the type and quality of materials to be used, as required by Administrative Rule 33(2).

12. Shortly after February 8, 2018, Respondents commenced work on the House Roof/Inside Work/Windows Proposal.

13. On or about August 9, 2018, Respondents presented another Proposal to the Homeowner to perform additional construction work, entitled, "Garage and Breezeway," consisting of two (2) pages, with a total project cost of \$33,629.00, including a first draw/deposit of \$11,000.00. The Garage/Breezeway Proposal contained the name (letterhead): "Rondo and Sons Builders" and "License # 2101204723." The Homeowner signed the Proposal on or about August 9, 2018. The Garage/Breezeway Proposal, marked Exhibit 8, is attached and incorporated.

14. On or about August 9, 2018, the Homeowner paid Respondents \$15,000.00 as the first draw/deposit (cash payment), regarding the Garage/Breezeway Proposal. The Homeowner subsequently paid the full contract amount of \$33,629.00, plus \$2,768.00 for "extras," via "draws" (cash payments) as requested by Respondents. The Garage/Breezeway Proposal contains a hand-written notation "Paid in full 8-9-18."

15. The Garage/Breezeway Proposal, consisted of the following summarized scopes of work to be completed:

Garage and Breezeway:

- Garage: Construct a 28' x 36' x 10' garage on 3 rows of cement block (cement and block work not included in this bid).
- Walls 2x6 construction with ½" OSB sheathing and finished with vinyl siding.
- Garage front/eave wall: 2 12' wide x 8' tall, insulated garage doors with openers.
- 2 3' steel entry doors (1 single light; one full light with blinds in between glass panes)
- 6/12 pitch roof with 1 foot overhang and trusses 4' on center with purlins for the 40-year steel roofing to match house.
- Soffit and fascia white aluminum
- Walls insulated with fiberglass batts and attic insulated with blown-in attic cat fiberglass insulation.
- Walls and Ceiling finished with interior white liner panel steel with all necessary trims.
- No electrical included.
- Breezeway: Construct breezeway 8' wide x 12' long x 8' tall connecting house to garage. Siding and roof same as garage.
- 3 36" x 36" white alliance double hung windows with screens.
- Interior insulated and finished with tongue and groove.
- No electrical included.

16. The Garage/Breezeway Proposal, contained detailed scopes of work to be performed and the total project cost; however, the Proposal did not include plans and specifications; or the costs for the materials and labor for each scope of work; or the type and quality of materials to be used, as required by Administrative Rule 33(2).

17. Shortly after August 9, 2018, Respondents commenced work on the Garage/Breezeway Proposal.

18. Since the Garage/Breezeway Proposal did not include Cement and Block work, the Homeowner hired a Contractor (cement/masonry) to install the cement and blocks for the foundation of the garage. In addition, the Homeowner purchased the blocks, which were on-site at the time of construction of the garage

19. Since the Garage/Breezeway Proposal did not include Electrical work, the Homeowner hired an Electrician to complete the Electrical work. The Electrician obtained the required Electrical Permit.

20. At the time of presenting and executing the two (2) Proposals, February 8, 2018 through August 9, 2018, and thereafter, as well as when the residential renovation services were subsequently performed, Rondo & Sons Builders Inc. was not licensed as a Residential Builder Company, as required by Section 601(1) and Article 24 of the Occupational Code. Rondo & Sons Builders Inc. subsequently obtained a Residential Builder Company license, effective December 11, 2019, after the Department notified Respondents of potential disciplinary action for operating an unlicensed Residential Builder Company, via a letter, dated October 31, 2019 (sent via email and mail). The licensure requirement notification, marked Exhibit 9, is attached and incorporated.

21. The application for the Individual license for Ryan Rondo included the Assumed Name (Doing Business As) "Rondo & Sons Builders." The Certificate of Assumed Name was filed in Oscoda County, effective March 11, 2013, and expired March 11, 2018. A Certificate of Assumed Name can only be obtained and used by an "Individual" (sole proprietor), not a business entity such as a n.

22. Pursuant to the "Carrying On Business Under Assumed Name or Fictitious Name Act," PA 101 of 1907, MCL 445.1(1) and (4) provide in pertinent part:

(1) A person shall not carry on, conduct, or transact business in this state under an assumed name, or under a designation, name, or style other than the real name of the person owning, conducting, or transacting that business, unless the person files in duplicate in the office of the clerk of the county or counties in which the person owns, conducts, or transacts, or intends to own, conduct, or transact, business, or maintains an office or place of business, a certificate on a form furnished by the county clerk setting forth the name under which the business owned is, or is to be, conducted or transacted, and the true or real full name and address of the person owning, conducting, or transacting the business.

(4) As used in this act:

(a) "Person" means 1 or more individuals, partnerships, trusts, fiduciaries, or other entities capable of contracting, except corporations and limited partnerships. [Emphasis added.]

23. On or about September 15, 2018, the Homeowner contacted the Oscoda County Building Department to submit a complaint, which included a list of sixteen (16) complaint items regarding the construction services provided by the Respondents. The Homeowner Complaint List, marked Exhibit 10, is attached and incorporated.

24. On or about September 18, 2018, the Oscoda County Building Inspector conducted a complaint-related Building Inspection regarding the Homeowner complaint item list. On or about September 19, 2018, the Oscoda County Building Inspector, and issued a letter stating:

To Whom it may concern:

I have inspected the property in this complaint. The workmanship on this project is appalling. First the garage was built without obtaining a building permit. The contractor told the property owner no permit was required because the owner was a 100% disabled veteran. I must of missed that memo. The garage was built 4' too short according to the paperwork supplied by owner.

In general I found all the the complaints listed by the owner to be accurate. The siding is improperly installed on many places around the home. The pictures supplied accurately show the problems.

In 15 years of inspecting this is one of the worst jobs I have run across.

The Building Inspector letter, marked Exhibit 11, is attached and incorporated.

25. On or about October 23, 2018, the Department received a Statement of Complaint, filed by the Homeowner, alleging in part: Respondents failed to build in accordance with the Contract; no Building Permit was obtained, no Inspections were called for; and poor and unacceptable quality of construction. An excerpted copy of the Statement of Complaint, and the list of complaint items, marked Exhibit 12, is attached and incorporated.

26. On or about November 15, 2018, the Department sent a Notice to Respondent, which notified Respondents of the Statement of Complaint filed by the Homeowner, and included

copies of complaint documents. The Notice to Respondent directed Respondents to submit a written response, including supporting documents, either confirming or denying the justification of the complaint. On or about December 7, 2018, the Department received Respondents' response to the complaint, which denied the justification of the complaint.

27. On or about December 19, 2018, the Department requested the Oscoda County Building Inspector to complete a Building Inspection Report (form) regarding his observations and determinations regarding the Homeowner's complaint items, and whether building code violations existed.

28. On or about January 9, 2019, the Department received a completed Building Inspection Report from the Oscoda County Building Inspector, dated September 19, 2018 (date of Inspection), which referenced the Homeowner's 16 complaint items, and made the following observations and determinations:

<u>Homeowner Complaint List Description</u>	<u>Building Code Violation</u>
No Building Permit obtained	R 105.1
Items #1, 2, 3, 4, 5, 7, 8, 9, 10, 12,14	Either Contract or Workmanship items [no code violation]
#6 – Vents: Contract states all vents will have new rubber boots and extended [through new roof]. Left toilet vent [waste] under new roof	P 3103.1
#11 – Flashing: Roof on breezeway only butted up to garage wall. No metal flashing or any seal. When it rains water goes down wall.	R 703.4
#13 – Siding: 38 places improperly installed. Within 2 weeks after contractor left, I now have 7 different spots where wood and house wrap can be seen. Many siding pieces are	R 703.11

only held by 3" roofing nails pushed in Celotex. Bowed and buckled in numerous places. 3 cut pieces of siding in the peaks have fallen off. Several places requiring start strip for siding has none – when wind blows it flaps away from the wall.

The Building Inspection Report, marked Exhibit 13, is attached and incorporated.

29. Section R 105.1 of the 2015 Michigan Residential Code (MRC), states:

**SECTION R105
PERMITS**

R105.1 Required. Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the *building official* and obtain the required *permit*.

30. Section P 3101.1 of the 2015 Michigan Residential Code (MRC), states:

**SECTION P3103
VENT TERMINALS**

P3103.1 Roof extension. All open vent pipes that extend through a roof shall terminate at least 1 foot (305 mm) above the roof, except that if a roof is to be used for any purpose other than weather protection, then the vent extension shall be run not less than 7 feet (2134 mm) above the roof.

31. Section R 703.4 of the 2015 Michigan Residential Code (MRC), states:

R703.4 Flashing. Approved corrosion-resistant flashing shall be applied shingle-fashion in a manner to prevent entry of water into the wall cavity or penetration of water to the building structural framing components. Self-adhered membranes used as flashing shall comply with AAMA 711. Fluid-applied membranes used as flashing in exterior walls shall comply with AAMA 714. The flashing shall extend to the surface of the exterior wall finish. Approved corrosion-resistant flashings shall be installed at the following locations:

1. Exterior window and door openings. Flashing at exterior window and door openings shall extend to the surface of the exterior wall finish or to the water-resistive barrier complying with Section 703.2 for subsequent drainage. Mechanically attached flexible flashings shall comply with AAMA 712. Flashing at exterior window and door openings shall be installed in accordance with one or more of the following:
 - 1.1. The fenestration manufacturer's installation and flashing instructions, or for applications not addressed in the fenestration manufacturer's instructions, in accordance with the flashing manufacturer's instructions. Where flashing instructions or details are not provided, pan flashing shall be installed at the sill of exterior window and door openings. Pan flashing shall be sealed or sloped in such a manner as to direct water to the surface of the exterior wall finish or to the water-resistive barrier for subsequent drainage. Openings using pan flashing shall incorporate flashing or protection at the head and sides.
 - 1.2. In accordance with the flashing design or method of a registered design professional.
 - 1.3. In accordance with other approved methods.
2. At the intersection of chimneys or other masonry construction with frame or stucco walls, with projecting lips on both sides under stucco copings.
3. Under and at the ends of masonry, wood or metal copings and sills.
4. Continuously above all projecting wood trim.
5. Where exterior porches, decks or stairs attach to a wall or floor assembly of wood-frame construction.
6. At wall and roof intersections.
7. At built-in gutters.

32. Section R 703.11 of the 2015 Michigan Residential Code (MRC), states:

R703.11 Vinyl siding. Vinyl siding shall be certified and *labeled* as conforming to the requirements of ASTM D3679 by an *approved* quality control agency.

R703.11.1 Installation. Vinyl siding, soffit and accessories shall be installed in accordance with the manufacturer's instructions.

R703.11.1.1 Fasteners. Unless specified otherwise by the manufacturer's instructions, fasteners for vinyl siding shall be 0.120-inch (3 mm) shank diameter nail with a 0.313-inch (8 mm) head or 16-gage staple with a $\frac{3}{8}$ -inch (9.5 mm) to $\frac{1}{2}$ -inch (12.7 mm) crown.

R703.11.1.2 Penetration depth. Unless specified otherwise by the manufacturer's instructions, fasteners shall penetrate into building framing. The total penetration into sheathing, furring framing or other nailable substrate shall be a minimum $1\frac{1}{4}$ inches (32 mm). Where specified by the manufacturer's instructions and supported by a test report, fasteners are permitted to penetrate into or fully through nailable sheathing or other nailable substrate of minimum thickness specified by the instructions or test report without penetrating into framing. Where the fastener penetrates fully through the sheathing, the end of the fastener shall extend a minimum of $\frac{1}{4}$ inch (6.4 mm) beyond the opposite face of the sheathing or nailable substrate.

R703.11.1.3 Spacing. Unless specified otherwise by the manufacturer's instructions, the maximum spacing between fasteners for horizontal siding shall be 16 inches (406 mm), and for vertical siding 12 inches (305 mm) both horizontally and vertically. Where specified by the manufacturer's instructions and supported by a test report, greater fastener spacing is permitted.

33. Pursuant to R 105.1 of the 2015 Michigan Residential Code, the scopes of work, detailed in the House Roof/Inside Work/Windows Proposal, dated February 8, 2018, and the Garage/Breezeway Proposal, dated August 9, 2018, required the submission of an Application for a Building Permit to the Building Department, and receiving a Building Permit, prior to commencing any work.

34. Pursuant to Section R 106 of the 2015 Michigan Residential Code, the scopes of work, detailed in the House Roof/Inside Work/Windows Proposal, dated February 8, 2018, and the Garage/Breezeway Proposal, dated August 9, 2018, required the submission of Construction Documents, such as Plans, Drawings, and/or Specifications, for review and approval by the Building Department prior to commencing any work. Section R 106 of the 2015 Michigan Residential Code (MRC) states:

**SECTION R106
CONSTRUCTION DOCUMENTS**

R106.1 Submittal documents. Construction documents, special inspection and structural program and other data shall be submitted in 1 or more sets with each application for a permit. The construction documents shall be prepared by or under the direct supervision of a registered design professional when required by 1980 PA 299, MCL 339.101 to 339.2919, and known as the Michigan occupational code. Where special conditions exist, the building official may require additional construction documents to be prepared by a registered design professional.

R 408.30506

R106.1.1 Information on construction documents. Construction documents shall be drawn upon suitable material. Electronic media documents may be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature,

and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, and rules and regulations, as determined by the building official.

R 408.30506

R106.1.2 Manufacturer's installation instructions. Manufacturer's installation instructions, as required by this code, shall be available on the job site at the time of inspection.

R106.1.3 Information on braced wall design. For buildings and structures utilizing braced wall design, and where required by the *building official*, braced wall lines shall be identified on the *construction documents*. Pertinent information including, but not limited to, bracing methods, location and length of *braced wall panels* and foundation requirements of braced wall panels at top and bottom shall be provided.

R106.1.4 Truss design data. As an alternative to the submission of truss design drawings, Figure R802.10.1, the truss design data sheet, may be provided to the building official as part of the construction documents at the time of application. Truss design drawings shall be submitted to the building official prior to truss installation as required by Section R802.10.1.

R 408.30506

R106.2 Site plan or plot plan. The *construction documents* submitted with the application for *permit* shall be accompanied by a site plan showing the size and location of new construction and existing structures on the site and distances from *lot lines*. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The *building official* is authorized to waive or modify the requirement for a site plan where the application for *permit* is for *alteration* or repair or where otherwise warranted.

R106.3 Examination of documents. The *building official* shall examine or cause to be examined *construction documents* for code compliance.

R106.3 Examination of documents. The *building official* shall examine or cause to be examined *construction documents* for code compliance.

R106.3.1 Approval of construction documents. Where the *building official* issues a *permit*, the *construction documents* shall be *approved* in writing or by a stamp that states "REVIEWED FOR CODE COMPLIANCE." One set of *construction documents* so reviewed shall be retained by the *building official*. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the *building official* or a duly authorized representative.

35. Pursuant to Section R 108 of the 2015 Michigan Residential Code, the submission of the Application for Building Permit would have required the payment of a fee to the Building Department. By failing to submit an Application for Building Permit and failing to pay the required Permit fee, Respondents deprived Oscoda County of revenue. Section R 108 of the 2015 Michigan Residential Code (MRC) states:

SECTION R108 FEES

R108.1 Fees. The fees prescribed in the act shall be paid to the enforcing agency of the jurisdiction before a permit to begin work for new construction, alteration, removal, demolition, or other building operation may be issued. In addition, an amendment to a permit necessitating an additional fee shall not be approved until the additional fee is paid.

R 408.30508

36. Pursuant to R 109 of the 2015 Michigan Residential Code, the scopes of work, detailed in the House Roof/Inside Work/Windows Proposal, dated February 8, 2018, and the Garage/Breezeway Proposal, dated August 9, 2018, required Respondents to request Inspections by the Building Department. Section R 109 of the 2015 Michigan Residential Code, which states:

SECTION R109 INSPECTIONS

R109.1 Types of inspections. For on-site construction, from time to time the *building official*, upon notification from the *permit* holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the *permit* holder or his or her agent wherein the same fails to comply with this code.

R109.3 Inspection requests. It shall be the duty of the *permit* holder or their agent to notify the *building official* that such work is ready for inspection. It shall be the duty of the person requesting any inspections required by this code to provide access to and means for inspection of such work.

R109.4 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official upon notification shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or agent of the permit holder wherein portion of the construction fails to comply with this code. The notification shall include specific reference to the code chapter and section numbers in violation in writing. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

37. Because Respondents: 1) failed to apply for and obtain the required Building Permit; 2) failed to submit the required Construction Documents for review and approval by the Building Department; and 3) failed to request the required Inspections to be completed by the Building Department, Respondents were allowed to complete work without any of the required oversight and scrutiny by the Building Department.

38. In or around April 2016, Respondents were retained by the Homeowner to construct a 52 ft x 32 ft Pole Barn at the subject address. Respondents applied for, and obtained, a Building Permit (Oscoda County Building Dept., No. 160102, issued April 8, 2016). The Final Inspection was approved on or about June 3, 2016, and the Certificate of Occupancy was issued on July 19, 2016. The 2016 Building Dept. documents, marked Exhibit 14, are attached and incorporated.

39. The Homeowner paid Respondents a total of \$70,817.00. Respondents deviated from the specifications and scopes of work clearly detailed in the Proposals/Contracts, without the approval of the Homeowner. Respondents did not present any written Change Orders for acceptance by the Homeowner. A Table summarizing the scopes of work per the Proposals and the status of the Homeowner complaint items, marked Exhibit 15, is attached and incorporated.

40. The Homeowner has commenced hiring Builders and Contractors to begin making corrections, repairs, and replacement of the deficient work performed by Respondents.

41. Section R 101.2 of the Michigan Residential Code (MRC) prescribes the “scope” of the Code, and Section R 101.3 prescribes the “intent” of the Michigan Residential Code. An important intent of the MRC is to “establish minimum requirements to safeguard the public safety, health and general welfare ...” [Emphasis added.].

SECTION R101 GENERAL

R101.1 Title. These provisions shall be known and cited as the Michigan residential code for 1- and 2-family dwellings and will be referred to as “the code.”

R 408.30501

R101.2 Scope. The provisions of the Michigan residential code for 1- and 2-family dwellings shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached 1- and 2-family dwellings and townhouses not more than 3 stories above grade plane in height with a separate means of egress and their accessory structures.

R101.3 Intent. The purpose of this code is to establish minimum requirements to safeguard the public safety, health and general welfare through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.

42. Based upon the years of licensure and required education (approximately 10 years),³ Ryan Rondo is expected, and required, to be knowledgeable regarding the Occupational Code and the Michigan Residential Code. When Ryan Rondo first obtained his Builder Individual license, effective April 25, 2013, he was required to provide proof of successful completion of the required 60-Hour Prelicensure course, including six (6) hours regarding the current Michigan Residential Code, and pass the license examination. In addition, Ryan Rondo renewed the license effective April 4, 2016, March 15, 2019, and March 2, 2022, respectively (current expiration date: May

³The 60-hour Prelicensure course requirement came into effect June 1, 2008.

31, 2025). Each time Ryan Rondo completed the Online Renewal form⁴ (3 times), Ryan Rondo certified that he had complied with the “Continuing Competency” requirements for renewal of the license, including at least one (1) hour covering building codes and laws; and that he had a current copy of the Michigan Residential Code. See MCL 339.2404b(c), 2404b(2); 2404(6); Mich Admin Code R 338.1564.

43. Rule 802(1) of the Michigan Administrative Hearing System,⁵ Administrative Hearing Rules, Part 8 provides that: [t]he relevant board or commission or the bureau may take disciplinary action based upon conduct which occurred before the issuance of a license or registration without regard to whether the bureau or board or commission had notice of the alleged grounds for discipline at the time the license or registration was issued. Mich Admin Code R 792.10802(1).

44. Rule 802(2) of the Michigan Administrative Hearing System, Administrative Hearing Rules, Part 8 provides that: [t]he expiration, surrender, lapse, suspension, or revocation of a license or registration does not terminate the bureau’s authority to proceed against a person under the licensing law or a board or commission, or the administrator’s authority under articles 5 and 6 of the occupational code, 1980 PA 299, MCL 339.501 to 339 606 to impose sanctions on a person whose license or registration has expired, lapsed, or been surrendered, suspended, or revoked for the following, whichever occurs later: (a) For a period of 7 years after the license or registration status change occurs. (b) For a period of 3 years after all complaints against the license or registration filed with the bureau have been closed. (c) Until the licensee or registrant is in full compliance with all final orders issued to the licensee or registrant. [Emphasis added]. Mich Admin Code R 792.10802(2).

45. Rule 803 of the Michigan Administrative Hearing System, Administrative Hearing Rules, Part 8 provides that: [i]n determining a violation of, or compliance with, the licensing law, a rule

⁴ Renewal application completed via “Online” process; a printout of the completed renewal form is not available.

⁵ The Michigan Administrative Hearing System (MAHS) is now known as the Michigan Office of Administrative Hearings and Rules (MOAHR).

promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law, the determination shall be made on the basis of compliance or violation at the time of the alleged violation. Mich Admin Code R 792.10803.

46. The purpose statement of the Michigan Occupational Code, Act 299 of 1980, as amended, MCL 339.101 *et seq*, states in part:

AN ACT to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations and to regulate certain persons and activities relative to those occupations; to create a board for each of those occupations; to establish powers and duties of certain departments and agencies and the boards of each occupation; to provide the promulgation of rules, to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances ... [Emphasis added].

ALLEGED VIOLATIONS

The Department alleges that Respondents have violated the provisions of the Occupational Code, as set forth in Counts I through IX:

COUNT I

Respondents' conduct evidences the failure to have all agreements and changes to the agreements between a builder, or contractor, and the customer in writing and signed by the parties, and copies provided to the customer, contrary to Mich Admin Code, R 338.1533(1), in violation of MCL 339.604(h).⁶

⁶ Certain sections of the Occupational Code, and the associated Administrative Rules, do not provide for the imposition of a disciplinary sanction in the event of a violation of the section or the rule; however, MCL 339.604 provides: 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 [MCL 339.602]: (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed. MCL 339.604(h).

COUNT II

Respondents' conduct evidences the failure to make certain that the written agreements (Proposals) clearly state the terms of the transaction, including specifications, and when construction is involved, both plans and specifications, including cost, the type and amount of work to be done, and the type and quality of materials to be used, contrary to Mich Admin Code, R 338.1533(2), in violation of MCL 339.604(h).

COUNT III

Respondents' conduct evidences the failure to maintain standards of construction in compliance with the Michigan Residential Code, contrary to Mich Admin Code, R 338.1551(5), in violation of MCL 339.604(h).

COUNT IV

Respondents conduct evidences the failure to account for or remit money coming into the person's possession that belongs to others, in violation of MCL 339.2411(2)(c).

COUNT V

Respondents conduct evidences the willful departure from or disregard of plans or specifications in a material respect and prejudicial to another, without consent of the Homeowner, in violation of MCL 339.2411(2)(d).

COUNT VI

Respondents' conduct evidences a willful violation of the building laws of the state, contrary to MCL 339.2411(2)(e).

COUNT VII

Respondents' conduct evidences incompetence, defined as a departure from, or a failure to conform to, minimal standards of acceptable practice for an occupation,⁷ contrary to MCL 339.604(g).

COUNT VIII

Respondents' conduct evidences the lack of good moral character,⁸ in violation of MCL 339.604(d).

COUNT IX

Respondents' conduct evidences fraud, deceit, or dishonesty in practicing an occupation, contrary to MCL 339.604(b).

DISCIPLINARY SANCTIONS

The Occupational Code prescribes certain disciplinary sanctions or penalties for violations of the provisions of the Occupational Code. The relevant provisions concerning the disciplinary sanctions or penalties related to the alleged violations set forth in this First Amended Formal Complaint are:

Section 604 (a)-(l) of the Occupational Code lists twelve (12) prohibitive acts (violations) and provides:

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

⁷Incompetence [MCL 339.604(g)] is defined as a departure from, or a failure to conform to, minimal standards of acceptable practice for an occupation, MCL 339.104(8).

⁸ MCL 339.104(7) provides "Good moral character" means good moral character as defined in section 1 of 1974 PA 381, MCL 338.41, which defines "Good moral character" as construed 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. [Emphasis added]

following [(a)-(l)] shall be subject to the penalties prescribed in section 602. MCL 339.604.

The Administrative Rules for Residential Builders and Maintenance and Alteration Contractors, Mich Admin Code, R 338.1521 *et seq*, do not specifically prescribe a penalty for a violation of the Administrative Rules.

However, Section 604(h) provides for the imposition of a penalty for violations of any statutory provisions or rules for which a penalty is not specifically prescribed:

Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed. MCL 339.604(h).

Section 2411(2)(a)-(m) provides:

A licensee or applicant who commits 1 or more of the following is subject to the penalties set forth in article 6 [Section 602]. MCL 339.2411.

Section 602(a)-(h) provides for the following penalties for violations of the Occupational Code and the associated Administrative Rules:

A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

- (a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.
- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.

- (e) In the case of a person licensed or registered under this act and except as otherwise provided in this act, an administrative fine to be paid to the department of not more than \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case. MCL 339.602.

The Department alleges that Respondents have acted in violation of the Occupational Code as set forth in Counts I through IX, constituting grounds for the assessment of a penalty, or penalties pursuant to Section 602. The Department seeks disciplinary sanctions to be imposed against Respondents.

COMMENCEMENT OF ADMINISTRATIVE PROCEEDING

The Department hereby commences an administrative proceeding pursuant to the Administrative Procedures Act, MCL 24.201 *et seq*, and the Occupational Code, to determine whether disciplinary action should be taken against Respondents, by the Department and the Michigan Board of Residential Builders and Maintenance and Alteration Contractors.

Respondents are hereby notified that, pursuant to MCL 339.508(2), Respondents have 15 days from the date of receipt of this First Amended Formal Complaint to notify the Department of Respondents' decision to either 1) negotiate a settlement of this matter, 2) to demonstrate compliance with the Occupational Code, or 3) to request a formal administrative hearing. Written notification of Respondents' selection shall be submitted to the Bureau of Construction Codes, Department of

Licensing and Regulatory Affairs, P.O. Box 30254, Lansing, MI 48909. If Respondents fail to notify the Department of their decision within 15 days, the Department will proceed with the prosecution of the First Amended Formal Complaint and will request the scheduling of a formal administrative hearing by the Michigan Office of Administrative Hearings and Rules (MOAHR). A Notice of First Amended Formal Complaint and a Compliance Election Form are included with the First Amended Formal Complaint.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS,
BUREAU OF CONSTRUCTION CODES

Date: *February 9, 2024* *William D. Wilhelm*

William D. Wilhelm
Administrative Law Specialist (P41249)

Felicia Badger, Manager
Enforcement Section
Licensing, Compliance & Operations Division
Bureau of Construction Codes
Department of Licensing and Regulatory Affairs

Attachments – Exhibits

IT IS FURTHER ORDERED that Respondent's failure to comply with all terms of this Order shall result in the REVOCATION of all licenses held by Respondent under the jurisdiction of the Board.

IT IS FURTHER ORDERED that the Respondent may petition for reinstatement of a revoked license 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 27th day of June, 2024.

BY: *Felicia Badger*

Felicia Badger, Manager
Enforcement Section
Bureau of Construction Codes

Effective date: 6/27/2024

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

IN THE MATTER OF:

**Bureau of Construction Codes,
Petitioner**

V

**Clint Lamanen,
Respondent**

Docket No.: 23-022101

Case No.: 2300121

**Agency: Bureau of Construction
Codes**

Case Type: BCC Residential Builders

Filing Type: Formal Complaint

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 Friday, October 13, 2023.

<u>Date</u>	<u>Document</u>
1. 10/11/23	Hearing Report
2. 08/10/23	Petitioner's Exhibits 1-15, Offered and Admitted
3. 08/10/23	Petitioner's First Amended Exhibit List (Attachments not made part of Certified Record)
4. 07/25/23	Petitioner's Witness and Exhibit Lists (Attachments not made part of Certified Record)
5. 07/06/23	Notice of Hearing with Proof of Service
6. 07/06/23	Request for Hearing

Madeline Kulhanek

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.: 23-022101

**Bureau of Construction Codes,
Petitioner**

Case No.: 2300121

v

**Agency: Bureau of Construction
Codes**

**Clint Lamanen,
Respondent**

**Case Type: BCC Residential
Builders**

Filing Type: Formal Complaint

**Issued and entered
this 11th day of October 2023
by: Chris Johnson
Administrative Law Judge**

HEARING REPORT

Procedural History

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Occupational Code, MCL 339.101 *et seq.* (Code). A Formal Complaint (Complaint) was issued on behalf of the Department of Licensing and Regulatory Affairs – Bureau of Construction Codes, Petitioner, on May 2, 2023. The Complaint alleges that Clint Lamanen, Respondent, violated provisions of the Code.

A copy of the Complaint with a Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR) on July 6, 2023. A Notice of Telephone Hearing was mailed to all parties on July 6, 2023, scheduling a hearing by telephone conference on August 10, 2023.

Petitioner filed a Witness List, Exhibit List, and proposed exhibits on July 25, 2022.

Petitioner filed a First Amended Exhibit List and an additional proposed exhibit on August 10, 2023.

The hearing proceeded as scheduled on August 10, 2023. Jason Werkema, Assistant Attorney General, appeared on behalf of Petitioner. S.A.,¹ a consumer who hired Respondent to complete renovations on his home, was also present and provided testimony on Petitioner's behalf. ALJ Chris Johnson presided over the hearing.

Respondent failed to appear for the administrative hearing. The undersigned ALJ waited 15 minutes from the scheduled time for hearing and determined that Respondent had been properly served with notice of the hearing. No request for adjournment had been filed. The hearing proceeded in Respondent's absence pursuant to Section 72(1) of the Administrative Procedures Act (APA), MCL 24.272(1).

Section 72(1) of the APA provides as follows:

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.

Further, the undersigned ALJ granted a default in favor of Petitioner and against Respondent pursuant to Section 78(2) of the APA, MCL 24.278(2), and Rule 134 of the uniform hearing rules, Mich Admin Code, R 792.10134.

Section 78(2) of the APA provides as follows:

Sec. 78. (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. (Emphasis supplied).

Additionally, Rule 134 of the uniform hearing rules, Mich Admin Code, R 792.10134, states as follows:

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. (Emphasis added).

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule,

¹ Initials used to protect privacy.

rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. Mich Admin Code, R 792.10134.

As a result of the default granted against Respondent at hearing, the factual and legal allegations contained in Petitioner's Complaint were deemed proven and true.

The following exhibits were offered by Petitioner during the hearing and were admitted into evidence:

1. Petitioner's Exhibit 1 – Bureau of Construction Codes Analyst Report.
2. Petitioner's Exhibit 2 – Residential Builders – Statement of Complaint, dated January 31, 2023, and signed by S.A.
3. Petitioner's Exhibit 3 – Sworn Statement, signed by Respondent.
4. Petitioner's Exhibit 4 – Construction Proposal, dated February 23, 2021.
5. Petitioner's Exhibit 5 – Copies of checks paid to Respondent.
6. Petitioner's Exhibit 6 – Notice to Respondent, dated February 17, 2023.
7. Petitioner's Exhibit 7 – Certification of Licensure pertaining to Respondent, dated March 7, 2023.
8. Petitioner's Exhibit 8 – Certification of Licensure pertaining to Lamanen Construction, LLC., dated March 7, 2023.
9. Petitioner's Exhibit 9 – Articles of Incorporation for Lamanen Construction, LLC., dated October 17, 2019.
10. Petitioner's Exhibit 10 – Claim of Lien from Howie Glass Co., Inc., dated January 26, 2023.
11. Petitioner's Exhibit 11 – Claim of Lien from Dustmen Electric, LLC., dated October 25, 2022.
12. Petitioner's Exhibit 12 – Claim of Lien from Loduca Woodworks, LLC., dated December 5, 2022.

13. Petitioner's Exhibit 13 – Claim of Lien from Everlast Floors, Inc., dated February 28, 2023.

14. Petitioner's Exhibit 14 – Restitution Breakdown.

15. Petitioner's Exhibit 15 – Oakland County Circuit Court Default Judgment awarding \$457,835.28 to S.A., dated June 9, 2023.

Respondent did not submit any proposed exhibits for the administrative hearing.

The record was closed at the conclusion of the hearing on August 10, 2023.

Issue and Applicable Law

The issue presented is whether Respondent violated the Code as alleged in the Formal Complaint, dated May 2, 2023.

Section 604 of the Occupational Code, MCL 339.604, states in relevant part:

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.

(c) Violates a rule of conduct of 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.

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

* * *

(l) Aids or abets another person in the unlicensed practice of an occupation.

Section 2411(2) of the Occupational Code, MCL 339.2411(2), states in relevant 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.

* * *

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

* * *

(h) Failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of or incidental to the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential structure that is prefabricated, preassembled, precut, packaged, or shell housing.

* * *

(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.

Mich Admin Code, R 338.1533 states, in relevant part:

Rule 33. (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 states, in relevant part:

* * *

(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.

* * *

FINDINGS OF FACT

Based on the default entered in this matter against Respondent, the witness testimony, and the admitted exhibits, the following facts are found to be established:

1. On or about February 23, 2021, Respondent provided homeowner, S.A., a proposal for renovations to his Bloomfield Hills, Michigan home for an estimated cost of \$315,000.00. [Pet. Exh. 4].
2. Respondent did not provide S.A. with a contract or any change orders following the proposal for renovations.
3. Despite having no written contract between Respondent and S.A., on or about September 29, 2021, S.A. paid an initial deposit to Respondent's company, Lamanen Construction LLC, for \$191,322. Work on the project commenced shortly thereafter, in and around October 2021. [Pet. Exh. 5, p 1].
4. Between September 2021 and October 2022, S.A. paid Respondent approximately \$1,330,000 to complete the agreed upon renovations to the home. [Pet. Exh. 5].
5. Despite receiving full payment, Respondent failed to pay several subcontractors and, as a result, numerous liens were filed by separate subcontractors on the property. [Pet. Exh. 10 through 13].
6. To date, Respondent has failed to pay off the liens despite receiving payment from S.A. for the work contemplated by the liens.

7. Respondent repeatedly assured S.A. of project completion by October 2022, however, Respondent failed to complete the project by October 2022.
8. Respondent ceased working on the home and communicating with S.A. in and around December 2022 despite numerous attempts by S.A. to contact Respondent.
9. At the time Respondent ceased communicating with S.A., Respondent was in possession of funds paid by S.A. for work that was not yet completed. To date, Respondent has not returned any unearned funds to S.A.
10. S.A. has had to pay additional money to other contractors to complete renovations that Respondent was already paid to complete.
11. Respondent worked through a business Lamanen Construction LLC to complete renovations to S.A.'s home. Lamanen Construction LLC is not a licensed residential builder in Michigan and was unlicensed throughout the project. [Pet. Exh. 8].
12. Respondent failed to respond to the Department after receiving notice of the complaint within 15 days as required.
13. S.A. credibly testified that he purchased the property in question and hired Respondent to renovate the home. He chose Respondent based upon a recommendation made from the original owner of the home and from an attorney S.A. knows through work.
14. S.A. credibly testified that the original proposal for renovations was for \$315,000.00. He never received a written contract or written change orders.
15. S.A. filed a civil lawsuit against Respondent in the Oakland County Circuit Court. A default judgment was granted in favor of S.A., and he was awarded total damages in the amount of \$457,835.28. Of this amount, \$121,242.86 was awarded due to outstanding liens on S.A.'s property, \$93,944.20 was awarded due to unauthorized fees charged to S.A., \$152,883.59 was awarded for monies paid by S.A. to other contractors to complete the renovation left unfinished by Respondent, and \$89,764.63 was awarded due to a final payment made by S.A. to Respondent which Respondent did not remit to subcontractors as required. [Pet. Exh. 14, 15].

Conclusions of Law

Petitioner submitted the Formal Complaint in this matter and has the burden of proof to show by a preponderance of the evidence that Respondent violated the Occupational Code as alleged in that Complaint, dated May 2, 2023.

Pursuant to the default entered against Respondent under Section 78(2) of the APA and Rule 134 of the uniform hearing rules, *supra*, the factual and legal allegations contained in the Complaint are taken as true and proven. Under Section 72 of the APA, *supra*, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true and proven. *Smith v Lansing School Dist*, 428 Mich 248; 406 NW2d 825 (1987).

Based on the above findings of fact, the following conclusions of law are found to be established:

Petitioner has established, by a preponderance of the evidence, that Respondent violated sections 604(b), 604(c), 604(d), 604(e), 604(g), 604(h), 604(l), 2411(2)(a), 2411(2)(c), 2411(2)(h), and 2411(2)(l) of the Code as alleged in Counts 1 through XI of the Complaint.

Petitioner has also established, by a preponderance of the evidence, that Respondent violated Mich Admin Code, R 338.1533(1) and R 338.1551(2), as alleged in Counts XI and XII of the Complaint.

Proposed Decision

Based upon the above findings of fact and conclusions of law, it has been established that Respondent violated the Occupational Code as alleged in Counts I through XI of the Formal Complaint. Respondent is therefore subject to sanction under MCL 339.602.

Recommendation as to Sanction:

The undersigned ALJ recommends that the Board impose the following sanctions on Respondent, as requested by the Bureau:

1. That Respondent be required to pay restitution to S.A. in the total amount of \$457,835.28.
2. Imposition of a fine on Respondent in the amount of \$10,000.00, or another amount deemed appropriate by the Board in accordance with MCL 339.602(e).

3. Revocation of all licenses held by Respondent under the jurisdiction of the Board if the restitution and fine amounts are not paid in accordance with the Board's final order under MCL 339.602(d).
4. Any other sanction the Board deems appropriate pursuant to MCL 339.602.

Chris A. Johnson

Chris A. Johnson
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; 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

CLINT LAMANEN
Residential Builder
License No. 24-20-00229

Complaint No. 2300121

_____ /

FORMAL COMPLAINT

Assistant Attorney General Jason W. Werkema, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes (Complainant), files this formal complaint against Clint Lamanen (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. Respondent also owned and operated an unlicensed residential builder company, Lamanen Construction LLC.
3. After receiving a complaint against Respondent, the Bureau investigated the allegations of the complaint pursuant to section 502 of the Code.
4. Section 604(b) of the Code subjects a licensee to sanction for practicing fraud, deceit, or dishonesty in practicing an occupation.
5. Section 604(c) of the Code subjects a licensee to sanction for violating a rule of conduct of 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(e) of the Code subjects a licensee to sanction who commits an act of gross negligence in practicing an occupation.

8. Section 604(g) of the Code subjects a licensee to sanction who commits an act which demonstrates incompetence.

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

10. Section 604(l) of the Code subjects a licensee to sanction who aids or abets another person in the unlicensed practice of an occupation.

11. Mich Admin Code, R 338.1533(1) provides that “[a]ll agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties.”

12. Mich Admin Code, R 338.1551(2) provides that a “licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification for the complaint.”

13. 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.

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

15. Section 2411(2)(h) of the Code subjects a licensee to sanction for failure to deliver to the purchaser the entire agreement of the parties including any finance or other charge arising out of, or incidental to, the agreement if the agreement involves repair, alteration, or addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure, building of a garage, laying of concrete on residential property, or manufacture, assembly, construction, sale, or distribution of a residential structure that is prefabricated, preassemble, precut, packaged, or shell housing.

16. 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.

17. 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

18. On or about February 23, 2021, Respondent provided homeowner, S.A.¹, a proposal for renovations to his Bloomfield Hills, Michigan home for an estimated cost of \$315,000.

¹ Initials used to protect privacy.

19. Respondent did not provide S.A. with a contract or any change orders following the aforementioned proposal.

20. Despite having no written contract between Respondent and S.A., on or about September 29, 2021, S.A. paid an initial deposit to Respondent's company, Lamanen Construction LLC, for \$191,322. Work on the project commenced shortly thereafter, in and around October 2021.

21. Between September 2021 and October 2022, S.A. paid Respondent approximately \$1,330,000 to complete the agreed upon renovations to the home.

22. Despite receiving full payment, Respondent failed to pay several subcontractors and, as a result, numerous liens were filed by separate subcontractors on the property.

23. To date, Respondent has failed to pay off the liens despite receiving payment from S.A. for the work contemplated by the liens.

24. Respondent repeatedly assured S.A. of project completion by October 2022, however, Respondent failed to complete the project by October 2022.

25. Respondent ceased working on the home and communicating with S.A. in and around December 2022 despite numerous attempts by S.A. to contact Respondent.

26. At the time Respondent ceased communicating with S.A., Respondent was in possession of funds paid by S.A. for work that was not yet completed. To date, Respondent has not returned any unearned funds to S.A.

27. S.A. has had to pay additional money to other contractors to complete renovations that Respondent was already paid to complete.

28. Respondent worked through a business Lamanen Construction LLC to complete the renovations to S.A.'s home. Lamanen Construction LLC is not a licensed residential builder in Michigan and was unlicensed throughout the project.

29. Respondent failed to respond to the Department after receiving notice of the complaint within 15 days as required by Mich Admin Code, R 338.1551(2).

COUNT I

30. 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 II

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

COUNT III

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

COUNT IV

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

COUNT V

34. Respondent's conduct as described above demonstrates aiding or abetting another person in the unlicensed practice of an occupation, in violation of section 604(l) of the Code.

COUNT VI

35. Respondent's conduct as described above constitutes failing to ensure that "[a]ll agreements and changes to the agreements between a builder, or contractor, and the customer [are] in writing and 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 VII

36. Respondent's conduct as described above constitutes the failure to respond, contrary to Mich Admin Code, R 338.1551(2), in violation of sections 604(c) and (h) of the Code.

COUNT VIII

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

COUNT IX

38. Respondent's conduct as described above constitutes a failure 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 X

39. Respondent's conduct as described above constitutes a failure to deliver to the purchaser the entire agreement of the parties, in violation of section 2411(2)(h) of the Code.

COUNT XI

40. Respondent's conduct as described above constitutes failing to satisfy judgments or liens or failing to pay an obligation as it becomes due in the ordinary course of business, 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, with a copy mailed to the undersigned assistant attorney general.

Respectfully submitted,

/s/ Jason W. Werkema
Jason W. Werkema (P80350)
Assistant Attorney General
Licensing & Regulation Division
P.O. Box 30758
Lansing, MI 48909
Telephone: (517) 335-7569
Facsimile: (517) 241-1997

Dated: May 2, 2023