



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2011 JAN 24 P 1:45

HEARINGS OFFICE

CONTRACTORS LICENSE BOARD
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the)	CLB-2007-235-L
Contractors' Licenses of)	
)	BOARD'S FINAL
ADVANCE HOME BUILDERS, INC.,)	ORDER
AND MARVIN K. KEOPUHIWA, RME,)	
)	
Respondents.)	
_____)	

BOARD'S FINAL ORDER

On December 1, 2010, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Contractors License Board ("Board"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties. The parties were subsequently provided an opportunity to file exceptions; however no exceptions were filed.

Upon review of the entire record of this proceeding, the Board adopts the Hearings Officer's recommended decision as the Board's Final Order. Accordingly, the Board finds and concludes that Respondents Advance Home Builders, Inc., and Marvin K. Keopuhiwa, RME ("Respondents"), violated Hawaii Revised Statutes ("HRS") §§444-17(2), (5), (13), and HRS §§444-25.5(b) and 444-25.5(b)(2), together with Hawaii Administrative Rules §§16-77-71(a)(2), 16-77-79(a)(3) and 16-77-97.

Accordingly, for the violations found, Respondents' contractors' licenses shall be revoked and Respondents shall immediately submit all indicia of licensure as a contractor

in the State of Hawaii to the Executive Officer of the Board. In addition, Respondents shall each pay a fine in the sum of \$5,000.00 and restitution to Sonny Dukes in the total sum of \$36,027.91, within sixty (60) days of the Board's Final Order. Payment of the fine shall be by certified check or money order made payable to the "State of Hawaii, Compliance Resolution Fund." Payment of the restitution shall be made payable to the complainant. All payments should be sent to: Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs, 235 South Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of both the fine and the restitution shall be conditions for relicensure should Respondents reapply for a contractor's license after the revocation period.

DATED: Honolulu, Hawaii: JAN 21 2011



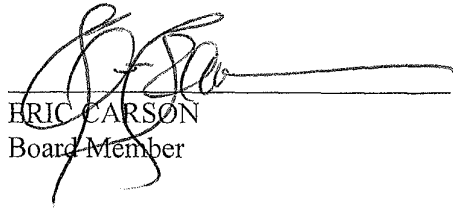
F.M. SCOTTY ANDERSON
Chairperson



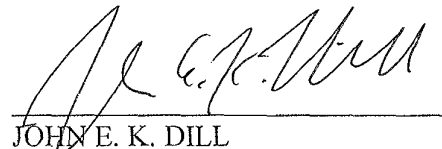
NEAL ARITA
Vice Chairperson



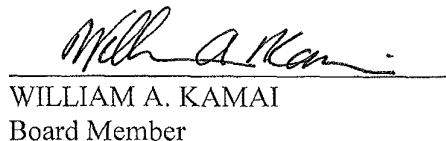
GUY M. AKASAKI
Board Member



ERIC CARSON
Board Member



JOHN E. K. DILL
Board Member





WILLIAM A. KAMAI
Board Member

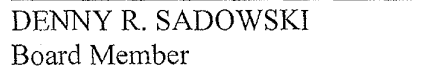


RANDALL B. C. LAU
Board Member


HAROLD L. MARTIN
Board Member


ALDON K. MOCHIDA
Board Member

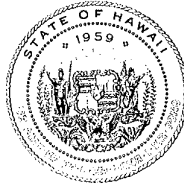

RONALD K. OSHIRO
Board Member


DENNY R. SADOWSKI
Board Member


DARYL SUEHIRO
Board Member


GERALD YAMADA

Board's Final Order; *In re Advance Home Builders, Inc., and Marvin K. Keopuhiwa, RME*; CLB-2007-235-L.



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2010 DEC -1 A 11: 55

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In the Matter of the)	CLB-2007-235-L
Contractors' Licenses of)	
)	HEARINGS OFFICER'S
ADVANCE HOME BUILDERS, INC.,)	FINDINGS OF FACT,
AND MARVIN K. KEOPUHIWA, RME,)	CONCLUSIONS OF LAW,
)	AND RECOMMENDED
Respondents.)	ORDER
_____)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On September 4, 2009, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), filed a petition for disciplinary action against the contractors' licenses of Advance Home Builders, Inc. and Marvin K. Keopuhiwa, RME ("Respondents"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

On May 20, 2010, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92 and 444. Petitioner was represented by its attorney, John T. Hassler, Esq. Respondents failed to appear.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

1. Respondent Advance Home Builders, Inc. (“AHB”) was licensed as a general contractor, License No. CT 20724, with classification “B” beginning on or about January 6, 1997. Said license expired on September 30, 2010.

2. Respondent Marvin K. Keopuhiwa was licensed as a general contractor, License No. 13744, with classification “B” beginning on or about January 6, 1997. Said license expired on September 30, 2010. At all times relevant herein Respondent Keopuhiwa was the responsible managing employee of Respondent AHB.

COUNT I

3. On November 21, 2004, Mark Busch entered into a six-page written contract with Respondent AHB in which Respondent AHB agreed to construct a house at 15-2830 Manini Street, Pahoia, Hawaii 96778.

4. The contract was signed by W. Michael Sessions on behalf of Respondent AHB.

5. Busch paid the amount called for under the contract.

6. The contract did not explain in detail the lien rights of the parties performing under the contract.

7. The contract did not explain Busch’s right to demand bonding on the project, how the bond would protect Busch or the approximate expense of the bond.

8. The contract did not disclose the approximate percentage of work to be subcontracted.

9. The contract did not include any notice of the contractor’s right to resolve alleged construction defects prior to commencing any litigation in accordance with section 672E-11.

COUNT II

10. The work performed by Respondent AHB was not in conformity with the plans and specifications.

11. The work undertaken by Respondent AHB was not performed in a workmanlike manner or in conformity with trade standards.

12. The deficiencies included, but were not limited to the following: exterior concrete walkways and lanai areas slope toward the dwelling causing mold, mildew and slippery conditions; interior concrete floors are not level, the quality of the concrete work is below acceptable standards of workmanship; beam and post size requirements in the plans and/or specifications were not met; heights and specifications were not met, final agreements and punchlists were not completed; doors were not set properly, interior finish trim, ceramic shower, ceramic floors, cabinets, garage door, general lumber cuts and general finish trim cuts, siding and roof were not installed according to accepted standards of workmanship.

13. At no time was Respondent Keopuhiwa involved in the construction work.

COUNT III

14. According to the terms of the contract, Respondent AHB agreed to warrant “all work for a period of Twelve (12) months following completion.”

15. The warranty period pursuant to the contract began on February 4, 2006 when construction was completed and Busch first occupied the house.

16. After completion of the work, Busch notified Respondent AHB verbally and in writing of numerous alleged deficiencies in Respondent AHB’s work, including a leaking roof by the garage door and water pooling near the front porch.

17. Busch subsequently relocated to California in 2006, necessitating the sale of the house.

18. On or about June 26, 2006, title to the home was conveyed to the buyers, Sonny and Olivia Dukes.

19. Before the expiration of the warranty period, Sonny Dukes communicated, in writing, with Respondent AHB regarding the alleged defects and/or poor workmanship with respect to the house and requested that the items be repaired/replaced under the terms of the warranty.

20. Although Respondent AHB was informed of Dukes' warranty claim before the expiration of the warranty period, Respondent AHB failed to repair or replace any of the deficiencies.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating the following provisions of the HRS and Hawaii Administrative Rules ("HAR"):

COUNT I

§444-17 Revocation, suspension, and renewal of licenses. In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a license for any cause authorized by law, including:

* * * *

(2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;

§444-25.5 Disclosure; contracts.

* * * *

(b) All licensed contractors performing home construction or improvements shall provide a written contract to the homeowner. The written contract shall:

* * * *

(2) Contain notice of the contractor's right to resolve alleged construction defects prior to commencing any litigation in accordance with section 672E-11;

§16-77-71 Principal and subordinate RMEs. (a) Contracting entities may have in their employ more than one RME, but shall designate in every case a principal RME who shall be primarily responsible for the direct management of the business of the contracting entity and who shall be:

* * * *

(2) Familiar with all contracts the contracting entity enters into, sees that all contract provisions are carried out, and signs or initials all contracts;

§16-77-79 Disclosure to homeowners. (a) Contractors engaging in home construction or home improvements shall, prior to obtaining a binding contract from the homeowner and prior to applying for a building permit:

* * * *

(3) Disclose the approximate percentage of work to be subcontracted;

COUNT II

§444-17 Revocation, suspension, and renewal of licenses.

In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a license for any cause authorized by law, including:

* * * *

(5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, that is prejudicial to a person entitled to have the construction project or operation completed in accordance with those plans and specifications;

§16-77-97 Performance. Licensees shall perform all work in a workmanlike manner. Workmanship shall conform to trade standards.

COUNT III

§444-17 Revocation, suspension, and renewal of licenses. In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a license for any cause authorized by law, including:

* * * *

(13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;

The undisputed evidence was sufficient to prove each of the foregoing violations.

IV. RECOMMENDED ORDER

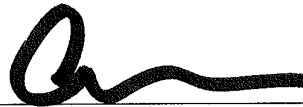
Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Board find and conclude that Respondents violated HRS §§444-17(2), (5), (13), HRS §§444-25.5(b) and 444-25.5(b)(2), together with HAR §§16-77-71(a)(2), 16-77-79(a)(3) and 16-77-97.

Accordingly, for the violations found, the Hearings Officer recommends that Respondents' licenses be revoked and that Respondents be required to immediately submit all indicia of licensure as a contractor in the State of Hawaii to the Executive Officer of the Board.

The Hearings Officer also recommends that Respondents be ordered to each pay a fine in the sum of \$5,000.00 and restitution to Sonny Dukes in the total sum of \$36,027.91¹, within sixty (60) days of the Commission's Final Order. Payment of the fine shall be by certified check or money order made payable to the "State of Hawaii, Compliance Resolution Fund." Payment of the restitution shall be made payable to the complainant. All payments should be sent to: Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs, 235 South Beretania Street, 9th Floor, Honolulu, Hawaii 96813. The Hearings Officer also recommends that payment of the fine and the restitution be made a condition for relicensure should Respondents reapply for a contractor's license after the revocation period.

DEC - 1 2010

DATED at Honolulu, Hawaii: _____.



CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

¹ Petitioner presented various estimates Dukes had obtained for the repair of the roof and completion of the punchlist items.