

443 Lafayette Road N.
St. Paul, Minnesota 55155
www.dli.mn.gov



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

(651) 284-5005
1-800-DIAL-DLI
TTY: (651) 297-4198

January 23, 2015

AS Construction LLC
411 Cedar Terrace
Shakopee, MN 55379

Re: Licensing Order
Our Investigative File #REG1410-00006/KBU

Dear Mr. Salgado:

The Department of Labor and Industry has concluded its investigation of the above captioned matter. The purpose of this letter is to inform you of the result of our investigation and the disciplinary action that we have determined is appropriate in light of the violations we have discovered.

Enclosed is a Licensing Order by which a monetary penalty of \$2,400 is assessed based on our determination that you hired subcontractors who were not registered in the Construction Contractor Registration Program. However, due to a recent change in the law governing the Registration Program, \$2,000 of the \$2,400 is forgiven. The remaining penalty of \$400 is due and payable on the date the Licensing Order becomes final. Future hiring of unregistered subcontractors will result in penalties that are not forgivable.

As provided by law and noted in the Order, you have the right to appeal this Order by requesting a hearing. A request for hearing must be made in writing as explained in the Order. However, you should be aware that if an administrative law judge finds that the hearing was requested solely for purposes of delay or that the request was frivolous, the Department may add to the amount of the penalty the costs charged to the agency by the Office of Administrative Hearings for the hearing.

If you have any questions, please contact me directly.

Sincerely,

A handwritten signature in cursive script that reads "Karen G. Bugar".

Karen G. Bugar
Senior Investigator
Construction Codes and Licensing Division
Tel: (651) 284-5374
Fax: (651) 284-5749
E-mail: DLI.register@state.mn.us

Enc.

This information can be provided to you in alternative formats (Braille, large print or audio).

An Equal Opportunity Employer

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of AS Construction LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against AS Construction LLC (“Respondent”).

Pursuant to Minn. Stat. §§ 326B.082, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$2,400, of which \$2,000 is hereby forgiven pursuant to Minn. Stat. §326B.701, subd. 6 (2014).

The Commissioner takes the above action based upon the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

1. Respondent holds a Contractor Registration issued by the Minnesota Department of Labor and Industry (“Department”) on November 5, 2014, No. IR687405. Respondent’s business address is: 411 Cedar Terrace, Shakopee, MN 55379. Respondent, as a registered contractor, must comply with all Minnesota statutes and rules governing the contractor registration and worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2013).
2. Minn. Stat. § 326B.701, subd. 5 (2014) prohibits a contractor from hiring another contractor to perform building construction services unless the contractor being hired is licensed with the Department or registered in the Department’s Construction Contractor Registration Program (“Registration Program”).
3. On October 3, 2014, the Department opened an investigation of Respondent based on information that indicated Respondent may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
4. On October 8, 2014, a Department investigator mailed a subpoena duces tecum to Respondent via first-class and certified mail.
5. Based on a review of Respondent’s answer to the subpoena, the Department determined that at least two of Respondent’s subcontractors failed to meet the factors required by Minn. Stat. § 181.723 subd. 4(a) (2012) in order to qualify to be treated as an independent

contractor. Specifically, from March 2013 through November 21, 2014, AS Construction LLC paid Lima Painters LLC and BLS Industrial Painting LLC, an hourly rate for work performed.

6. Between June 2013 and November 2014, Respondent paid Lima Painters LLC and BLS Industrial Painting LLC, for the performance of building construction or improvement services and treated them as independent contractors despite the fact that neither of these contractors was registered in the Registration Program at the time they performed construction services on Respondent's behalf.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11 (b) (1) (2012).
2. Respondent misclassified at least three workers as independent contractors by paying an hourly rate. As a result of being paid on an hourly basis, Respondent's workers did not receive compensation on a commission or per-job competitive basis and not on any other basis, and could not realize a profit or suffer a loss under their contract to perform services. Minn. Stat. §181.723, subd. 7(a)(6)(7) (2014).
3. Respondent hired unregistered subcontractors. Minn. Stat. § 326B.701, subd. 5 (b) (2) (2014).

IV. DETERMINATION OF PENALTY AMOUNT

In determining the amount of the penalty, the Commissioner considered: the extent of deviation from compliance; whether the violations were willful; the gravity of the violations; the number of violations; whether there is a history of past violations; whether Respondent gained economic benefit in not complying with the law; and other factors as justice may require.

V. REQUEST FOR HEARING

Pursuant to Minn. Stat. § 326B.082, subd. 12(c) (2014), Respondent shall have 30 days after issuance of this Licensing Order to request a hearing. A request for hearing must be in writing and must be served on or faxed to the Commissioner at the following address or fax number by the deadline.

Minnesota Department of Labor and Industry
CCLD - Enforcement Services Unit
Attention: Charlie Durenberger
443 Lafayette Road North
St. Paul, MN 55155

Fax number: (651) 284-5746

The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. If the request for hearing is served by

fax it cannot exceed 15 pages in length and must be received no later than 4:30 p.m. central time on the last day permitted for serving a request. Respondent's review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 12(c) (2014).

If Respondent submits to the Commissioner a timely request for hearing, this Licensing Order shall be stayed unless otherwise ordered by a judge, and a contested case hearing will be conducted. The contested case procedures are set out in chapter 14 of the Minnesota Statutes, and the Rules of the Office of Administrative Hearings, Minn. Rules 1400.5010 to 1400.8400 (2013), and Minn. Stat. § 326B.082, subd. 12(c) (2014). These materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, and are also available at www.revisor.mn.gov.

VI. EFFECT OF FINAL ORDER


If Respondent does not request a hearing or Respondent's request for a hearing is not served on or faxed to the Commissioner by 30 days after issuance of this Licensing Order, this Licensing Order shall become a final order of the Commissioner and will not be subject to review by any court or agency. *See* Minn. Stat. § 326B.082, subd. 12(c) (2014).

The portion of the monetary penalty assessed against the Respondent by this Licensing Order for hiring unregistered subcontractors is forgiven, but the violation alleged herein shall be deemed evidence of a history of a violation for hiring unregistered subcontractors for purposes of calculating a monetary penalty for any future violation of Minn. Stat. § 326B.701, subd. 5 (b) (2) (2014).

The monetary penalty assess against the Respondent by this Licensing Order, other than the forgiven portion, is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014). When this Licensing Order becomes final, the Commissioner may file and enforce any unpaid portion of the penalty as a judgment in district court without further notice or additional proceedings. *See* Minn. Stat. § § 16D.17 (2012) and 326B.083, Subd. 2 (2014). Failure to pay a monetary penalty owed may result in the revocation, suspension, or denial of any or all licenses, permits, certificates, and registrations issued by the Commissioner. *See* Minn. Stat. § 326B.082, subd. 17 (2014). Also pursuant to Minn. Stat. § 16D.13 (2014), Respondent is hereby notified that thirty (30) days after the date this Licensing order becomes final, simple interest computed in accordance with Minn. Stat. § 16D.13, subd. 2 (2014) will begin to accrue on the unpaid portion of the penalty.

Dated: 1/23/15

KEN B. PETERSON
Commissioner

BY: 
CHARLIE DURENBERGER
Director of Licensing and Enforcement
Construction Codes and Licensing Division
Department of Labor and Industry