



November 4, 2015

Crescencio Aguirre-Rivera  
15720 Rockford Rd., Apt 101  
Plymouth, MN 55446

Re: Our File Number: REG. 1506-00018/KBU

Dear Mr. Aguirre-Rivera:

The Minnesota Department of Labor and Industry, Construction Codes and Licensing Division, has received evidence that your company has engaged in violations of Minn. Stat. § 181.723(2014) and Minn. Stat. §326B.081 to 326B.085 (2014).

Enclosed is an Administrative Order we issued today by which you are ordered to pay a monetary penalty of \$2,000. The \$2,000 penalty for failure to respond to the subpoena duces tecum is due and payable 10 days after the date the Administrative Order becomes final.

You have the right to contest the Administrative Order by requesting a hearing within 30 days of the issuance of the Order. In the event a hearing is requested, the hearing would be held before an Administrative Law Judge ("ALJ") who, after hearing the evidence, would make a determination of whether or not violations have occurred.

The ALJ would then issue a recommendation to the Commissioner as to whether the violations were proven and the penalty reasonable. If the ALJ finds that the violation occurred and the penalty is reasonable, the Order will become final and the monetary penalty will become due and owing. Once the Order becomes final, the monetary penalty will be reduced to a judgment in Ramsey County District Court and any other appropriate district court, and collection procedures will commence. You would have the right to be represented by legal counsel throughout these proceedings, but you are not required to have one.

If you have any questions or concerns regarding this letter, or the enclosed Order, feel free to contact the undersigned investigator directly.

Sincerely,

Karen Bugar  
Senior Investigator  
Tel: 651-284-5374  
Fax: 651-284-5749  
E-mail: karen.bugar@state.mn.us

Enclosure: Administrative Order  
Cc: 3800 62<sup>nd</sup> Avenue N., Brooklyn Center, MN 55429

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of Crescencio Aguirre-Rivera

**ADMINISTRATIVE ORDER  
WITH PENALTY**

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**I. ORDER**

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Crescencio Aguirre-Rivera (“Respondent”).

Pursuant to Minn. Stat. §§ 326B.701 (2014); 326B.082, subd. 7 (2014) and 326B.083 (2014) the Commissioner hereby assesses against Respondent a monetary penalty of \$2,000.

The Commissioner also hereby orders Respondent to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondent, individually or doing business in any business name, to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which licensure or registration in the Construction Contractor Registration Program (“Registration Program”) is required in the state of Minnesota.

The Commissioner takes the above action based upon the following findings of fact and conclusions of law:

**II. FINDINGS OF FACT**

1. Respondent is a principal of Elias Drywall LLC, a contractor registered in the Registration Program, registration Nos. IR687890 and IR690985. Respondent’s address is: 15720 Rockford Rd. Apt. 101, Plymouth, MN 55446.
2. According to the records of the Minnesota Secretary of State, Respondent filed Elias Drywall LLC as a limited liability company on November 18, 2014 with a registered office address of 15720 Rockford Rd. Apt. 101, Plymouth, MN 55446.
3. On June 8, 2015, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent and his company 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 June 17, 2015, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent. The subpoena required the production of documentation relating to Respondent’s subcontractors, contractors, and employees of his company, Elias Drywall LLC. The subpoena required a response within 20 days. The certified letter was returned as “Unable to Forward.”

5. A search of the Minnesota Workers' Compensation Insurance Verification webpage provided an additional address of 3800 62<sup>nd</sup> Avenue N., Brooklyn Center, MN 55429, which was effective February 28, 2015.
6. On September 8, 2015, the investigator sent Respondent a subpoena duces tecum via first-class mail and certified mail to the Brooklyn Center address. The certified letter was returned on October 5, 2015 as "Unclaimed."
7. On October 5, 2015, a warning letter was sent via first class mail to Respondent requiring a response to the subpoena duces tecum.
8. As of the date of this order, Respondent has not responded to the subpoena.

### **III. CONCLUSIONS OF LAW**

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 7 (2014).
2. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11 (b)(6) (2014).

### **IV. DETERMINATION OF PENALTY AMOUNT**

In determining the amount of the penalty, the Commissioner considered: the extent of deviation from compliance; whether the violation was willful; the gravity of the violation; 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. 8 (2014), Respondent shall have 30 days after issuance of this Administrative 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. The request for hearing must specifically state the reasons for seeking review of the order. 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 8 (2014).

If Respondent submits to the Commissioner a timely request for hearing, the Administrative 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 Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.5010 to 1400.8400 (2013), and Minn. Stat. § 326B.082, subd. 8 (2014). These materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, and are also available at [www.revisor.mn.gov](http://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 the deadline specified in the "Request for Hearing" section of this Administrative Order, this Administrative 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. 8 (2014).

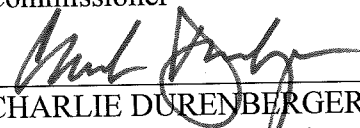
The monetary penalty assessed upon Respondent by this Administrative Order is due and payable on the date the Administrative Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014). When this Administrative Order becomes final, the Commissioner may file and enforce any unpaid portion of the penalty as a judgment in district court without further notice or additional proceedings. *See* Minn. Stat. §§ 16D.17 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 Administrative 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: \_\_\_\_\_

11/4/15

KEN B. PETERSON  
Commissioner

BY: \_\_\_\_\_

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