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St. Paul, Minnesota 55155
www.dli.mn.gov



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

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

February 12, 2015

Jeff Baggenstoss
Black Pearl Builders, LLC
22249 Patch Lake Road
Cold Spring, MN 56320

Re: Licensing Order
Our Investigative File #REG1411-00001/KBU

Dear Mr. Baggenstoss:

As you know, 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 326B.081 to 326B.085 (2014). The Department has concluded its investigation into this matter. This letter is to inform you of the results of that investigation.

The Department has prepared a Licensing Order by which your company's registration is suspended and a civil penalty of \$5,000 is assessed. Enclosed you will find a copy of the Licensing Order containing the basis for the Department's action.

You have the right to contest this Licensing Order by requesting a hearing within 30 days. In the event a hearing is requested, it 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. If the ALJ finds that the violations occurred and the penalty is reasonable, the Order will become final and the civil penalty will become due and owing. You would have the right to be represented by legal counsel throughout these proceedings, but you are not required to have legal counsel.

If you have any questions, please contact me directly.

Sincerely,

A handwritten signature in black ink that reads "Karen G. Bugar". The signature is written in a cursive, flowing style.

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

Enc.

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

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STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Black Pearl Builders, LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Black Pearl Builders, 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 \$5,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2014) and Minn. Stat. § 326B.083 (2014), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR663636, until such time that Respondent provides a complete answer to the Commissioner’s November 20, 2014 subpoena and pays the civil penalty imposed herein.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2014), the Commissioner also hereby orders Respondent and its principals, during the period of contractor registration suspension, to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Minnesota Construction Contractor Registration Program is required.

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

II. FINDINGS OF FACT

1. Respondent is engaged in the business of performing public or private sector commercial or residential building construction or improvement services for which registration in the Construction Contractor Registration Program (“Registration Program”) is required. Respondent holds a Contractor Registration issued by the Minnesota Department of Labor and Industry (“Department”) on March 6, 2013, No. IR663636.
2. Respondent’s business address is: 22249 Patch Lake Road, Cold Spring, MN 56320. Respondent, as a registered contractor, must comply with all Minnesota statutes and rules governing contractor registration and worker classification, Minn. Stat. §§ 181.723 and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2013).
3. 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”).

4. According to the records of the Minnesota Secretary of State, Respondent registered as a limited liability company on February 26, 2010 with a registered office address of 22249 Patch Lake Road, Cold Spring, MN 56320.
5. On November 13, 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.
6. On November 20, 2014, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at the Cold Spring, Minnesota address. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees. Delivery of the subpoena sent via certified mail was returned by the United States Postal Service ("USPS") as "Unclaimed" on December 22, 2014 and included two forwarding addresses for Respondent: 105 River Oaks Drive, Cold Spring, MN 56320; and 1544 E Villa Theresa Drive, Phoenix, AZ 85022. The subpoena sent via first-class mail was not returned by the USPS.
7. Respondent provided an incomplete response to the subpoena on December 11, 2014 and specifically did not include information on subcontractors used on or after September 15, 2012.
8. On December 12, 2014, the Department investigator mailed a second request for subcontractor information to Respondent at the Cold Spring, Minnesota address. This letter was not returned by the USPS.
9. On January 13, 2015, the Department investigator mailed a third request for subcontractor information to Respondent at 1544 E Villa Theresa Drive, Phoenix, AZ 85022. This letter was not returned by the USPS.
10. The Commissioner has not received a reply from Respondent as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723; 326B.701, and 326B.082, subd. 11 (b) (1) (2014).
2. Respondent failed to provide a complete answer to the Commissioner's November 20, 2014 subpoena. 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. 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, subds. 4 and 12(c) (2012).

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).


Respondent is prohibited from applying for reinstatement of its contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

The monetary penalty assessed against the Respondent by this Licensing Order 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 (2014) 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: 2/12/15

KEN B. PETERSON
Commissioner


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