

August 5, 2015

Ismael Ayala Cano
Ayala Cano Drywall, LLC
3800 62nd Ave. N.
Brooklyn Center, MN 55429

Re: Licensing Order
Contractor Registration No.: IR672495

Dear Mr. Ayala:

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. 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 monetary 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,



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

Encl: Licensing Order

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Ayala Cano Drywall, LLC

LICENSING ORDER

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Ayala Cano Drywall, LLC (“Respondent”).

Pursuant to Minn. Stat. § 326B.082, subds. 11(b), 12, and 17 (2014) and Minn. Stat. § 326B.083 (2014), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR672495, until such time that Respondent provides a complete answer to the Commissioner’s February 10, 2015 subpoena issued to Sublime Drywall, L.L.C., and pays the monetary penalties assessed by the Administrative and Licensing Orders issued by the Commissioner on June 5, 2015.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2014), the Commissioner also hereby orders Respondent and its principal(s), 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 (“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. Minn. Stat. § 326B.701, subd. 2 (2014) requires all contractors who intend to provide commercial or residential building construction or improvement services in Minnesota to be registered with the Registration Program if they are not required to hold a license issued by the Commissioner.
2. According to the records of the Minnesota Secretary of State (“SOS”), Respondent filed as a limited liability company on February 17, 2011 with a registered office address of 5937 Kentucky Ave. N., Crystal, MN 55428. The SOS business filing is inactive as of April 21, 2014.
3. Respondent holds a Contractor Registration issued by the Commissioner on September 23, 2013, No. IR672495. In its registration, Respondent identified its business address as: 5937 Kentucky Ave. N., Brooklyn Park, MN 55428.

4. Respondent, as a registered contractor, must comply with all Minnesota statutes and rules governing contractor registration and worker classification, Minn. Stat. §§ 181.723, 326B.701, 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2013).
5. Respondent's principal and chief manager, Ismael Ayala Cano ("Cano"), is also the principal and chief manager of Sublime Drywall L.L.C. ("Sublime").
6. In February 2015, the Minnesota Department of Labor and Industry ("Department") opened an investigation of Sublime based on information that indicated that Sublime and Cano may have engaged in violations of the laws and rules governing the classification of workers in the construction industry.
7. On February 10, 2015, a Department investigator sent Sublime and Cano a subpoena requiring the production of documents and records relating to their contractors, subcontractors, and employees.
8. Although Cano provided a response to the subpoena, his response was incomplete in that it failed to include requested contracts, bids, invoices, copies of checks, or IRS forms 1099 that Sublime provided to its subcontractors. The 2014 business tax filing that Cano filed for Sublime reported over \$966,000 in contract labor and its 2013 business tax filing reported over \$442,000 in contract labor.
9. On June 5, 2015, the Commissioner issued a Licensing Order suspending Sublime's registration for failure to provide a complete response to the February 10, 2015 subpoena. The Order also imposed a monetary penalty of \$12,000, \$2,000 of which was forgiven. Sublime did not request a hearing to contest the Order; therefore the Order became final on July 6, 2015.
10. On June 5, 2015, the Commissioner issued an Administrative Order to Cano, individually and 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 Registration Program is required. The Order also imposed a monetary penalty of \$2,000. Cano did not request a hearing to contest the Order; therefore the Order became final on July 6, 2015.
11. As of the date of this Order, Respondent's principal, Cano, has not provided a complete response to the Commissioner's February 10, 2015 subpoena, nor has he paid the monetary penalties imposed in the June 5, 2015 Administrative Order and Licensing Order.

III. CONCLUSIONS OF LAW

1. Respondent's principal committed violations of applicable law. Minn. Stat. §§ 181.723; 326B.701, and 326B.082, subd. 11 (b) (1) (2014).
2. Respondent's principal, Cano, failed to provide a complete answer to the February 10, 2015 subpoena issued by the Commissioner to Sublime. Minn. Stat. § 326B.082, subd. 11 (b) (6) (2014).
3. Respondent's principal, Cano, failed to pay penalties owed on the date the Licensing Order and Administrative Order became final. Minn. Stat. § 326B.082, subd. 17 (2014).

IV. 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.


V. 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.

Dated: 8/5/15

KEN B. PETERSON
Commissioner


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