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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

December 16, 2014

Francisco Fuentes
El Peligroso Roofing Inc.
1379 Winchell Street
St Paul, MN 55106

Re: Our Investigative File No. REG1407-00013/WWH

Dear Mr. Fuentes:

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(2012) and 326B.081 to 326B.085(2012). 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 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 or concerns regarding this letter, or the enclosed Order, do not hesitate to contact the undersigned investigator directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Ward Wheeler". The signature is written in a cursive style and is positioned above the typed name.

Ward Wheeler
Senior Investigator
Tel: 651-284-5140
Fax: 651-284-5749
E-mail: ward.wheeler@state.mn.us

Enclosure: Licensing Order

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of El Peligroso Roofing Inc.

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against El Peligroso Roofing Inc. (“Respondent”).

Pursuant to Minn. Stat. §§ 181.723, subds. 7 and 8a; 326B.082, subd. 12 (b); and 326B.083 (2012), the Commissioner hereby assesses against Respondent a monetary penalty of \$5,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2012) and Minn. Stat. § 326B.083 (2012), the Commissioner hereby suspends the construction contractor registration of Respondent, No. IR676722, until such time that Respondent provides a complete answer to the Commissioner’s October 20, 2014 subpoena and pays the monetary penalty assessed above.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2012), the Commissioner also hereby orders Respondent and its principals, during the period of license suspension, to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the 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 providing building construction or improvement services and has a business address of 1379 Winchell Street, St. Paul, MN.
2. Respondent holds a construction contractor registration, No. IR676722, issued by the Commissioner on January 30, 2014. Respondent, as a registered contractor, must adhere to the Minnesota statutes and regulations governing Contractor Registration, Minn. Stat. §§ 181.723 (2012) and 326B.081 to 326B.085 (2012) and Minn. R. Chapter 5224 (2013).
3. On July 8, 2014, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent based on information that Respondent may have engaged in misclassification of its workers.
4. On October 23, 2014, a Department investigator sent Respondent a subpoena duces tecum via first-class mail and via certified mail requiring the production of records and other information relating to Respondent’s contractors, subcontractors and employees. The subpoena required a response within 20 days. The certified letter was returned as undeliverable by the United States Postal Service (“USPS”) and subpoena sent via first-class mail was not returned by the USPS.

5. On November 20, 2014, the Department investigator mailed a second request for information to Respondent at the Winchell Street address. This letter was not returned by the USPS.
6. Both the subpoena and supplemental request for information required a response from Respondent within 30 days of the Commissioner's service of the same. Respondents did not reply to either request.
7. Respondent failed to provide an answer to the subpoena.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723 (2012) and 326B.082, subd. 11 (b)(1) (2012).
2. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11 (b)(6) (2012).

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) (2012), 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) (2012). 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) (2012).

Respondent is prohibited from applying for reinstatement of its residential building contractor license until such time full compliance with the terms of this Licensing Order have 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) (2012). 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 (2012). 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 (2012). Also, pursuant to Minn. Stat. § 16D.13 (2012), 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 (2012) will begin to accrue on the unpaid portion of the penalty.

Dated: 12/16/14

KEN B. PETERSON
Commissioner

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