

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Sergio Rivera Herrera

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

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

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 7; and 326B.083 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$1,000.

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 the principal and chief manager of Los Mezquites Drywall, LLC, a contractor registered with the Minnesota Department of Labor and Industry (“Department”) through the Registration Program, registration No. IR655698. Respondent’s address is: 14750 W Burnsville Pkwy, Lot 189, Burnsville, MN 55306. The registered address of Los Mezquites Drywall, LLC with the Minnesota Secretary of State is: 4841 73rd Ave N, # 233, Brooklyn Park, MN 55409
2. On February 12, 2015, a Department investigator sent Respondent a subpoena duces tecum requiring the production of records and other information relating to the contractors, subcontractors and employees of his company, Los Mezquites Drywall, LLC. The subpoena required a response within 20 days.
3. On February 20, 2015 the letter sent to the Brooklyn Park address was returned as it was “attempted - not known” and the USPS was “unable to forward.”
4. On February 24, 2015 the certified letter sent to the Burnsville address was returned as it was “not deliverable as addressed” and the USPS was “unable to forward.” The subpoena sent via first-class mail to the address listed on the registration was not returned.

5. Respondent failed to provide an answer to the subpoena.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. §§ 181.723 and 326B.082, subd. 11(b)(1) (2014).
2. Respondent failed to comply with a subpoena issued by the Commissioner in violation of 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 or notice. 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 8 (2014).

If the 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.

VI. EFFECT OF FINAL ORDER

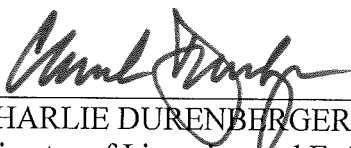
If Respondent does not request a hearing or Respondent's request for a hearing is not served on or faxed to the Commissioner by the deadline specified in the "Request for Hearing" section of this Administrative Order, this Administrative Order shall become a final order of the Commissioner and will not 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(s) is/are 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: 4/30/15

KEN B. PETERSON
Commissioner


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