

443 Lafayette Road N.
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 24, 2014

Mike Smith
217 15th Ave. SE
Rochester, MN 55904

Re: Our Investigative File No. REG1305-00070/WWH

Dear Mr. Smith:

I am writing in response to your December 15, 2014 letter regarding the conclusions of our investigation of your activities as an independent contractor.

Enclosed you will find a Licensing Order we issued today which vacates the Licensing Order we issued to you last month and acknowledges your \$100 payment as a civil penalty for our allegation that you provided us with misleading information by stating that you had not performed work as a subcontractor even though you provided us with a 1099 showing that you had worked for Hiller Stores.

To be clear, when an Order is "vacated" it means it never existed. Based on the Licensing Order we issued today, all previous Orders against you are gone and the only penalty we are seeking against you is the \$100 you sent us with your letter. In other words, once this Licensing Order becomes final, our case is closed and there is nothing further you need to do regarding this matter.

If you have any additional questions or concerns regarding our investigation, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Durenberger". The signature is written in a cursive style with a large, sweeping flourish at the end.

CHARLIE DURENBERGER
Director of Licensing and Enforcement
Construction Codes and Licensing Division
Tel: (651) 284-5827
Fax: (651) 284-5746
Email: charles.durenberger@state.mn.us
CRD/id

Enc. (Licensing Order)

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Mike Smith Tile LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Mike Smith Tile LLC (“Respondent”).

The Commissioner hereby vacates the previous Licensing Order issued to Respondent on November 24, 2014.

Pursuant to Minn. Stat. § 326B.082, subds. 2 and 11 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$100, payment of which is acknowledged by the Commissioner.

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

II. FINDINGS OF FACT

1. Respondent’s business address is: 217 15th Avenue SE, Rochester, MN.
2. Respondent holds contractor registration number IR659992, issued by the Commissioner on June 4, 2014. Respondents Michael E. Smith and Mike Smith Tile LLC, as a registered contractor, must adhere to the Minnesota statutes and rules governing construction contractors, Minn. Stat. §181.723 (2014), Minn. Stat. § 326B.701 (2014), and Minn. Stat. §§ 326B.081 to 326B.085 (2014).
3. On May 31, 2013, an investigator for the Minnesota Department of Labor and Industry (“Department”) received information that Respondent was performing residential and commercial construction services and was not registered with the Department’s Construction Contractor Registration Program (“Registration Program”).
4. On September 18, 2013, the investigator sent to Respondent via certified and first-class mail a subpoena duces tecum 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 subpoena sent via certified mail was returned marked “Forward Time Exp” but gave a forwarding address of 217 15th Ave SE, Rochester MN. The subpoena sent via first-class was not returned by the United States Postal Service.

5. On December 17, 2013, the investigator sent a second request for information to Respondent at the 217 15th Ave. SE address.
6. On December 27, 2013, Respondent's principal, Mike Smith, called the investigator and asked to have a copy of the subpoena mailed the 217 15th Ave. SE address. The investigator mailed a copy to the address.
7. On January 22, 2014, Smith left a voice mail message for the investigator stating that his answer to the subpoena was "on the way." There was no information received by the investigator.
8. On May 30, 2014, the Commissioner issued an Administrative Order to Respondent and Smith at the 217 15th Ave. SE address. The Order required Respondent to register with the Registration Program and provide the information requested in the subpoena.
9. On June 4, 2014, Respondent registered with the Registration Program.
10. On June 6, 2014, Respondent submitted answers to the subpoena claiming that it had no employees, no subcontractors, and had not acted as a subcontractor. However, despite these assertions, Respondent submitted an IRS form 1099 showing that it had, in fact, performed services as a subcontractor for Hiller Stores Inc.
11. Respondent provided misleading information in response to the subpoena duces tecum.
12. On November 24, 2014, the Commissioner issued a Licensing Order against Respondent based on the allegation that it had provided false or misleading information to the Commissioner.
13. On December 11, 2014, the Commissioner issued an Order vacating the May 30, 2014 Administrative Order.
14. On December 23, 2014, the Commissioner received an unsolicited cash payment of \$100 from Respondent.
15. In the interests of justice, the Commissioner deems Respondent's \$100 payment as an appropriate civil penalty for Respondent's provision of misleading information in response to the September 2013 subpoena.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723 (2014) and 326B.082, subd. 11 (2014).
2. Respondent performed building construction or improvement services without first registering with the Commissioner. Minn. Stat. § 181.723, subd. 7(b)(3) (2012).

3. Respondent provided false or misleading information in response to a request for information from the Commissioner in violation of Minn. Stat. §326B.082, subd. 11(b) (2) (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), Respondents 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. 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, subs. 4 and 8 (2014).

If Respondent submits to the Commissioner a timely request for hearing, the 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 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 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 (2014).

Because Respondent has already submitted payment of the monetary penalty assessed herein, this Order will have no further effect on Respondent, other than to serve as evidence of a history of a violation by Respondent.

Dated: 12/24/14

KEN B. PETERSON
Commissioner


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