

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Samuel Mullaney

**ADMINISTRATIVE ORDER
WITH PENALTY PURSUANT
TO MINN. STAT. § 181.723**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Samuel Mullaney (“Respondent”).

Pursuant to Minn. Stat. §§ 181.723; 326B.082, subd. 7; and 326B.083 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$2,000, which shall be forgiven if Respondent demonstrates to the Commissioner by the 31st day after this Administrative Order is issued that Respondent successfully registered with the Commissioner in the Minnesota Construction Contractor Registration Program (“Registration Program”).

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 to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required. The cease and desist order remains in effect until compliance with the registration requirements of Minn. Stat. § 181.723, subd. 4a (b) (2014) is achieved.

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, but has not registered with the Registration Program.
2. On January 27, 2015, the Minnesota Department of Labor and Industry (“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. According to a homeowner, Respondent had performed construction services for the homeowner using the business name of Perfections Flooring or Mullaney Carpet & Tile LLC. Neither business was registered in the Registration Program.

3. On February 4, 2015, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at the address listed on his with the Minnesota Secretary of State for Mullaney Carpet & Tile LLC with a copy to an address linked to the phone number listed for Respondent. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees; and asking for his contractor registration number.
4. On February 14, 2015, Respondent contacted the investigator by phone. Respondent stated that he was no longer using Mullaney Carpet & Tile LLC or Perfections Flooring but did perform limited construction services as a sole proprietor. The Department investigator agreed to send a new subpoena to Respondent at his home address, 2225 Brooks Avenue, Red Wing, MN.
5. On February 18, 2015, the Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at his home address. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees; and asking for his contractor registration number.
6. On March 16, 2015, the Department received Respondent's response stating that he operated as a sole proprietor, that he had no employees or subcontractors and did not work for other contractors.
7. Respondent has not registered his business as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723 and 326B.082, subd. 7 (2014).
2. Respondent failed to register with the Department's Registration Program prior to providing building construction or improvement services in Minnesota. Minn. Stat. §181.723, subd. 4a (b) (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. 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 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).

If the Commissioner determines that Respondent failed to register successfully with the Registration Program within the 31-day period required, then the monetary penalty is due and payable 20 days after the Commissioner serves notice of this determination or on the date this Administrative Order becomes final, whichever is later. *See* Minn. Stat. § 326B.083, subd. 3 (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 (2012). Also, pursuant to Minn. Stat. § 16D.13 (2014), Respondents 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: 3/26/15

KEN B. PETERSON
Commissioner



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