

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Construction Contractor
Registrations of NPH Construcion LLC, and
NPH Construction LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against NPH Construcion LLC, a/k/a NPH Construction LLC (“Respondents”).

Pursuant to Minn. Stat. §§ 181.723, subs. 7 and 8a; 326B.082, subd. 12 (b); and 326B.083 (2014), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$1,000.

Pursuant to Minn. Stat. §§ 326B.082, subs. 11(b) and 12, and 326B.083 (2014), the Commissioner hereby suspends the construction contractor registrations of Respondents, No. IR655517 and IR667298, until such time that Respondents provide a complete answer to the Commissioner’s December 8, 2014 subpoena and pay the monetary penalty assessed above.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2014), the Commissioner also hereby orders Respondents and their principals, during the period of 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 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. Respondent NPH Construcion LLC is engaged in the business of providing building construction or improvement services and holds construction contractor registration, No. IR655517, issued by the Commissioner on September 17, 2012. In its registration, Respondent provided a business address of PO Box 18462, Minneapolis, MN.
2. . As a registered construction contractor, Respondent must adhere to the Minnesota statutes and regulations governing Contractor Registration, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014), and Minn. R. Chapter 5224 (2013).

3. Respondent NPH Construction LLC is engaged in the business of providing building construction or improvement services and has a business address of 19 5th Ave NE, Forest Lake, MN. Although Respondent NPH Construction LLC is not filed with the Minnesota Secretary of State, it holds a construction contractor registration, No. IR667298, issued by the Commissioner on May 7, 2013. As a registered construction contractor, Respondent NPH Construction LLC must adhere to the Minnesota statutes and regulations governing Contractor Registration, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014), and Minn. R. Chapter 5224 (2013).
4. On May 2, 2013, the Manager of NPH Construcion LLC, Dionicio Pulido Hernandez, completed a Minnesota Secretary of State “Notice of Change of Registered Office/Registered Agent” form indicating that the name of the business was NPH Construction LLC with the registered office at the Forest Lake address.
5. Both Respondents disclosed the same Federal Employer Identification Number in their registrations.
6. On December 3, 2014, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondents based on information that indicated that Respondents may have engaged in misclassification of their workers.
7. On December 8, 2014, a Department investigator sent Respondents a subpoena duces tecum via first-class mail and certified mail requiring the production of records and other information relating to Respondents contractors, subcontractors and employees. The subpoena was issued to NPH Construcion LLC a/k/a NPH Construction LLC and mailed to the Forest Lake address. The subpoena required a response within 20 days. The subpoena sent via certified mail was returned marked “Unable to Forward.” The subpoena sent via first-class mail was not returned by the United States Postal Service (USPS).
8. When the Department received no response to the subpoena, the Department investigator mailed a second request for information to Respondent at the Forest Lake address on February 4, 2015. This letter was not returned by the USPS.
9. On April 22, 2015, a Department investigator sent Respondents a second subpoena duces tecum via first-class mail and certified mail requiring the production of records and other information relating to Respondent’s contractors, subcontractors and employees. The subpoena was issued to NPH Construcion LLC a/k/a NPH Construction LLC at the Minneapolis address. The subpoena required a response within 20 days. Neither the subpoena sent via certified mail nor the subpoena sent via first-class mail was returned by the USPS.
10. Both the subpoena and supplemental request for information required a response from Respondents within 30 days of the Commissioner’s service of the same. Respondents did not reply to either request.
11. Respondents failed to provide an answer to the subpoena.

III. CONCLUSIONS OF LAW

1. Respondents committed a violation of applicable law. Minn. Stat. §§ 181.723 (2014) and 326B.082, subd. 11 (b) (1) (2014).
2. Respondents failed to comply with a subpoena issued by the Commissioner. 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 Respondents 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) (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. 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. Respondents review rights are more thoroughly described in Minn. Stat. § 326B.082, subds. 4 and 12(c) (2014).

If Respondents submit 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.

VI. EFFECT OF FINAL ORDER


If Respondents do not request a hearing or Respondents' 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).

Respondents are prohibited from applying for reinstatement of their construction contractor registrations until such time full compliance with the terms of this Licensing Order has been achieved.

The monetary penalty assessed against the Respondents by this Licensing Order is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014). 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 (2014) 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), Respondents are 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 (2014) will begin to accrue on the unpaid portion of the penalty.

Dated: 6/9/15

KEN B. PETERSON
Commissioner


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