

February 20, 2015

Jon Schmoker
Schmoker Construction, LLC
59292 County Rd 84
Kellogg, MN 55945

Re: Our File Number: REG. 1412-00013/KBU

Dear Mr. Schmoker:

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(2014) and Minn. Stat. §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.

Enclosed is an Administrative Order we issued today by which you are ordered to pay a monetary penalty of \$4,000, \$2,000 is assessed based on our determination that you hired subcontractors who were not registered in the Construction Contractor Registration Program. However, due to a recent change in the law governing the Registration Program, the \$2,000 is forgiven as a first time violation. Future hiring of unregistered subcontractors will result in penalties that are not forgivable. The remaining \$2,000 monetary penalty is for failure to successfully register in the Registration Program or obtain a residential building contractor license. If you fail to register successfully with the Registration Program or obtain a residential building contractor license within the required 31 day period, the forgivable portion of the penalty, \$2,000, will be due and payable 20 days after the date the Administrative Order becomes final.

You have the right to contest the Administrative Order by requesting a hearing within 30 days of the issuance of the Order. In the event a hearing is requested, the hearing 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 as to whether the violations were proven and the penalty reasonable. If the ALJ finds that the violation occurred and the penalty is reasonable, the Order will become final and the civil penalty will become due and owing. Once the Order becomes final, the civil penalty will be reduced to a judgment in Ramsey County District Court and any other appropriate district court, and collection procedures will commence. You would have the right to be represented by legal counsel throughout these proceedings, but you are not required to have one.

If you have any questions or concerns regarding this letter, or the enclosed Order, feel free to contact the undersigned investigator directly.

Sincerely,



Karen Bugar, Senior Investigator
Tel: 651-284-5374 Fax: 651-284-5749
E-mail: karen.bugar@state.mn.us
Enclosure: Administrative Order

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Jon Schmoker, individually,
and Schmoker Construction, LLC

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Jon Schmoker, individually, and Schmoker Construction, LLC (“Respondents”).

Pursuant to Minn. Stat. §§ 181.723; 326B.082, subd. 7; and 326B.083 (2014), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$4,000, \$2,000 of which is hereby forgiven pursuant to Minn. Stat. §326B.701, subd. 6 (2014), and \$2,000 of which shall be forgiven if Respondents demonstrate to the Commissioner by the 31st day after this Administrative Order is issued that Respondents successfully registered with the Minnesota Construction Contractor Registration Program (“Registration Program”) or obtain a residential building contractor license from the Commissioner.

The Commissioner also hereby orders Respondents to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondents 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. § 326B.701, subd. 2 (b) (2014) is achieved or Respondents obtain a residential building contractor license.

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

II. FINDINGS OF FACT

1. Respondents are engaged in the business of providing building construction or improvement services, but have not registered with the Registration Program, which is administered by the Minnesota Department of Labor and Industry (“Department”). On February 16, 2015, Respondent, Jon Schmoker, applied to take the Department’s residential building contractor license exam.
2. According to the records of the Minnesota Secretary of State (“SOS”), Respondent Schmoker Construction, LLC registered as a limited liability company on December 7,

2004 with a registered office address of 122 Township Road 135, Kellogg, MN 55945. The SOS registration was administratively terminated on August 3, 2012.

3. On December 10, 2014, the Department opened an investigation of Respondents based on information that indicated Respondents may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
4. On December 15, 2014, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondents at 59292 County Rd 84, Kellogg, MN 55945. The subpoena required the production of documentation relating to Respondents' subcontractors, contractors, and employees. Delivery of the subpoena sent via certified mail was accepted and signed for by Jon Schmoker on December 19, 2014.
5. On December 22, 2014, Schmoker called the Department investigator twice and claimed that his company has no employees. He stated that he contracts with homeowners on paper only, and has a licensed subcontractor that pulls permits. The investigator told Mr. Schmoker that he was required to respond in writing to the subpoena and would need to either be licensed as a residential building contractor or register in the Registration Program. Mr. Schmoker was directed to the Department's website at www.dli.mn.gov.
6. Based on a review of Respondents' answer to the subpoena, the Department determined that between September 2012 and December 2014, Respondents paid Binner Drywall; Advantage Climate Solutions, LLC; Fenske Painting & Decorating, LLC; Kennedy Flooring, LLC; Larry Gusa's Woodworking, LLC; Gary Stevenson Masonry, LLC; Danckwart's Landscaping & Excavating, LLC; One by One, Inc.; and Stan Gordon Painting, LLC, for the performance of building construction or improvement services and treated them as independent contractors, despite the fact these contractors were not registered in the Registration Program at the time they performed construction services on Respondents' behalf.

III. CONCLUSIONS OF LAW

1. Respondents committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 7 (2014).
2. Respondents provided building construction or improvement services without being registered with the Registration Program. Minn. Stat. § 326B.701, subd. 2 (2014).
3. Respondent hired unregistered subcontractors. Minn. Stat. § 326B.701, Subd. 5 (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 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. 8 (2014), Respondents 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, subsd. 4 and 8 (2014).

If Respondents submit 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 Respondents do not request a hearing or Respondents' 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 \$2,000 portion of the monetary penalty assessed against the Respondents by this Administrative Order for hiring unregistered subcontractors is forgiven, but the violation alleged herein shall be deemed evidence of a history of a violation for hiring an unregistered subcontractor for purposes of calculating a monetary penalty for any future violation of Minn. Stat. § 326B.701, subd. 5 (b)(2) (2014).

The \$2,000 portion of the monetary penalty assessed upon Respondents by this Administrative Order for failing to register in the Registration Program is forgivable. However, if the Commissioner determines that Respondents failed to successfully register in the Registration Program within 31 days after the issuance of this Administrative Order, then the forgivable portion of the 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(a) (2014).

When this Administrative Order becomes final, the Commissioner may file and enforce any unforgiven and 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 is 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: 2/20/15

KEN B. PETERSON
Commissioner


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