

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Alamo Drywall LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

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

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$5,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2014) and Minn. Stat. § 326B.083 (2014), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR661221, until such time that Respondent provides a complete answer to the Commissioner’s December 3, 2015 subpoena and pays the monetary penalty imposed herein.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2014), the Commissioner also hereby orders Respondent and its principal(s), during the period of contractor 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 Minnesota 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 is engaged in the business of performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required.
2. Pursuant to Minn. Stat. § 181.723, subd. 3(b) (2014), if an individual is an owner of a business entity that performs building construction or improvement services, the individual is an employee of the person for whom the individual performs services in the course of the persons trade unless: (1) the business meets the nine factors in paragraph (a); (2) the business entity is registered with the Secretary of State, if required.
3. Respondent is registered with the Registration Program, registration No. IR661221. In its registration, which was submitted on January 13, 2013, Respondent identified its business address as: 15706 Finesse Way, Apple Valley, MN 55124. Respondent also indicated that it is owned by one individual, and though it failed to disclose the required information regarding the identity of its owner, the individual who completed the

registration was identified as Marco Ortega and records of the Minnesota Workers' Compensation Insurance Association reflect that Respondent identified Ortega as its sole owner and chief manager when it obtained a workers' compensation insurance policy on April 8, 2011.

4. On August 3, 2012, Respondent's business filing with the Minnesota Secretary of State ("MN SOS") was administratively dissolved. On August 6, 2013, the name hold for "Alamo Drywall, LLC" was administratively terminated by the MN SOS. The business address Respondent provided to the MN SOS is the same address it provided in its registration in the Registration Program.
5. Respondent, as a registered contractor, must adhere to the Minnesota statutes and rules governing contractor registration and worker classification, Minn. Stat. §§ 181.723(2014); 326B.701; and 326B.081 to 326B.085 (2014), and Minn. Rules Chapter 5224 (2015).
6. On October 16, 2015, the Minnesota Department of Labor and Industry ("Department") opened an investigation of Respondent based on information that indicated that Respondent may have engaged in violations of the statutes and rules governing the classification of workers in the construction industry.
7. On December 3, 2015, a Department investigator sent Respondent 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 and was mailed via first-class and certified mail to the address Respondent provided in its registration.
8. On December 16, 2015, both subpoenas were returned to the Department by the United States Postal Service ("USPS") as the USPS was unable to forward the mail.
9. On January 11, 2016, the Department investigator mailed a second request for information to Respondent via first-class mail at its registration address. This letter was returned by the USPS.
10. Respondent failed to provide an answer to the subpoena or the Department's subsequent request for information.
11. In its January 13, 2013 registration, Respondent stated that it carried workers' compensation insurance. Investigation by the Department found that Respondent has not had workers' compensation insurance since April 8, 2012. Respondent also claimed that it was registered with the MN SOS, but as noted above, its business registration was administratively dissolved in August 2012, prior to its registration in the Registration Program.
12. As part of its investigation, the Department obtained evidence that Respondent performed services for Absolute Drywall, Inc ("ADI"). and was paid \$138,292 between September 2012 and January 2014. Because Respondent was not registered when it began performing services for ADI, its owner is deemed to have been an employee of ADI for that period of time.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2014).
2. Respondent failed to respond to a subpoena issued by the Commissioner. Minn. Stat. §§ 326B.082, subd. 11 (b)(6) (2014).
3. Respondent failed to notify the Commissioner of a change of address change within 15 days of the change. Minn. Stat. §§ 326B.701, subd.3(d) (2014).
4. By falsely stating in its registration that it carried workers' compensation insurance and was registered with the Minnesota Secretary of State, Respondent provided false or misleading information to the state in connection with a registration application. Minn. Stat. §§ 326B.701, subd. 5(a) and 326B.082, subd. 11(b)(2) (2014).
5. Respondent is deemed an employee Minn. Stat. § 181.723, subs. 3 and 4(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 violations were willful; the gravity of the violations; 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. 12(c) (2014), Respondent 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. Respondent's review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 12(c) (2014).

If Respondent submits 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 (2015), 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 Respondent does not request a hearing or Respondent's 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).

Respondent is prohibited from applying for reinstatement of its contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

The monetary penalty assessed against the Respondent 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), Respondent is 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: 5/13/16

KEN B. PETERSON
Commissioner

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