

REG1511-00005JM

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Semper Roofing & Construction LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Semper Roofing & Construction LLC (“Respondent”).

Pursuant to Minn. Stat. §§ 181.723, subd. 4 (2014), §§ 326B.082 through 326B.085 and 326B.701 (2014); the Commissioner hereby assesses against Respondent a monetary penalty of \$1,000, of which \$900 is hereby forgiven pursuant to Minn. Stat. §326B.701, subd. 7 (2014).

The Commissioner takes the above action based upon the following Findings of Fact and Conclusions of Law:

II. FINDING OF FACT

1. Respondent is a registered contractor holding registration No. IR675744. Respondent’s business address is: 22983 Kiowa Street NW, St Francis, MN. Respondent, as a registered contractor, 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).
2. On November 9, 2015, the 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.
3. On December 28, 2015, a Department investigator mailed a subpoena to Respondent.

4. Based on a review of Respondent's answer to the subpoena, the Department determined that seven of Respondent's subcontractors were not registered at the time they performed services on Respondent's behalf, and that one of Respondent's subcontractors failed to meet the factors required by Minn. Stat. § 181.723 subd. 4(a) (2014) in order to qualify to be treated as an independent contractor. Specifically, between April 2015 and December 2015, Respondent paid Timothy Steven Walsh, d/b/a Walsh Construction LLC, an hourly rate for work performed.

III. CONCLUSIONS OF LAW

1. An individual or business entity that engages in building construction or improvement services must adhere to the Minnesota statutes and rules governing independent contractors, Minn. Stat. §§ 181.723 and 326B.701(2014).
2. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723 and 326B.701 (2014).
3. Respondent hired persons who were neither licensed by the Department nor registered the Registration Program to provide construction services on Respondent's behalf and treated them as independent contractors in violation of Minn. Stat. § 326B.701, subd. 5(b) (2) (2014).
4. Respondent misclassified an employee as an independent contractor by paying him an hourly rate for all work performed. Minn. Stat. § 181.723, subd. 7(a)(6)(7) (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.

Of the \$1,000 monetary penalty, \$900 was assessed for hiring unregistered subcontractors and was forgiven. The \$100 portion of the penalty that was not forgiven was assessed for misclassifying an employee who was paid on an hourly basis by treating him as independent contractor.

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, subds. 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).

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: _____

3/23/16

KEN B. PETERSON
Commissioner



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