

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of the Contractor Registration of  
Crew Construction Co. LLC

**LICENSING ORDER  
WITH PENALTY**

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**I. ORDER**

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Crew Construction Co. LLC.

Pursuant to Minn. Stat. §§ 326B.082, subd. 6; 326B.082, subd. 12 (b); 326B.083 (2014); and 326B.701 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$10,000.

Pursuant to Minn. Stat. § 326B.082, subs. 11(b) and 12 (2014) and Minn. Stat. § 326B.083 (2014), the Commissioner hereby revokes the Contractor Registration of Respondent, No. IR688652.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2014), the Commissioner also hereby orders Respondent and its principals 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. Minn. Stat. § 326B.701, subd. 2 (2014) requires all contractors who intend to provide commercial or residential building construction or improvement services in Minnesota to be registered with the Minnesota Department of Labor and Industry (“Department”)’s Construction Contractor Registration Program (“Registration Program”) if they are not required to hold a license issued by the Department.
2. Pursuant to Minn. Stat. § 181.723, subd. 3 (2014), an individual who performs services for a person that are in the course of the person’s trade, business, profession, or occupation is an employee of that person and that person is an employer of the individual unless the individual meets all nine factors described in Minn. Stat. § 181.723, subd. 4(a) (2014) (“the nine factor test”). If the individual cannot meet all nine factors, he or she is deemed to be an employee of the person that hired the individual.

3. Minn. Stat. § 181.723, subd. 4(a) and (b) (2014) also states that an individual who is required to be registered in the Registration Program or is an owner of a business entity that is required to be registered but who fails to do so, is presumed to be an employee of any person that hires the individual to perform services on the person's behalf. However, the person for whom the services were performed may rebut this presumption by showing that the unregistered individual met all nine factors of the nine factor test at the time the services were provided.
4. According to the records of the Minnesota Secretary of State ("SOS"), Crew Construction Co. LLC ("Crew") filed as a limited liability company on August 21, 2014 with a registered agent and office address of Richard L. Morris, 7241 Ohms Lane, Suite 275, Edina, MN 55439. The manager is recorded as Shinon Lindberg ("Lindberg"), 1776 Pinehurst Avenue, St. Paul, MN 55116.
5. Respondent held a contractor registration issued by the Department on December 16, 2014, No. IR688652, which expired on December 31, 2015. As a part of Respondent's electronic registration application, Lindberg certified "that the person signing the application has: reviewed it; determined that the information provided is true and accurate." Lindberg listed a second owner in addition to himself. The second owner is Bloomington Investors LLC, 9617 Oak Ridge Trail, Hopkins, MN 55305.
6. In a letter emailed by Respondent's attorney on May 10, 2016, it states "I have also had an opportunity to discuss with my client our conversation this morning regarding Investment, LLC and an address of 9617 Oakridge Trail, Hopkins, MN 55303. Mr. Lindberg has advised me that the entity and address, respectively, are not associated with Crew Construction, LLC." The Department investigator requested confirmation that Lindberg did not have a business relationship or partnership with Mr. Daniel Gelb of Bloomington Investors, LLC. In an email on May 11, 2016, Respondent's attorney replied that Dan Gelb and Bloomington Investors, LLC was a member of Crew Construction, LLC until January 2016.
7. Respondent, as a registered contractor, must comply with all statutes and rules governing the residential and commercial construction industry, including contractor registration and worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2015).
8. Minn. Stat. § 326B.701, subd. 5 (2014) prohibits a contractor from hiring another contractor to perform building construction services unless the contractor being hired is licensed with the Department or registered in the Registration Program.
9. On February 9, 2016 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.
10. On February 17, 2016, a Department investigator mailed a subpoena duces tecum to Respondent. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees.
11. Respondent complied with the a portion of the subpoena on March 7, 2016 by providing acknowledgment that it had employees working in the State of Minnesota, had used

subcontractors, and had performed building construction or improvement services as a subcontractor to another contractor since 2014. Respondent, through its attorney, requested an extension until March 31, 2016, to work with its accountants to gather and produce all of the documents requested in the subpoena.

12. On March 29, 2016, a second request for an extension until April 6, 2016 was granted to Respondent in response to a written request from its attorney. The request was made on behalf of Lindberg, who was in the midst of changing residences.
13. On April 9, 2016, Respondent provided an incomplete response to the subpoena. Its submittal included a listing of its employees and subcontractors for 2014 and 2015. On April 25, 2016, Respondent provided Crew's Form W-3 Transmittal of Wage and Tax Statements for 2015.
14. According to the Minnesota Department of Revenue, there is no record of Respondent's business tax filing for 2014 or 2015. A similar check with the Minnesota Department of Employment and Economic Development revealed that Crew Construction Co. LLC does not have an unemployment insurance account, nor has Respondent reported the payment of any employee wages.
15. Based on its review of Respondent's response, the Department determined that between September 2014 (prior to its registration in the Registration Program) and December 31, 2015, Respondent's subcontractors failed to meet the nine factor test. Respondent did not provide written contracts, bids, invoices, or copies of checks made to the following unregistered individuals and subcontractors: Marlon (Siding Co.); MN Remodeling Vision LLC; Mr. Carpet; On Time Glass; Galo Sanchez; Carlos Sanchez; Fasto Lojo; Carlos Santos; Luis Collaquazo; Luis Roblus; Carlos Contraras; San Humberto; Javier Montero; Carlos Xiejus; Monka Wells; Jose Amadeo; Build Right Construction Services, Inc.; EDG Painting; Mr. Repair; Juan Sanchez, d/b/a City Brothers Construction; Lico's Drywall, LLC; Angel MTZ Siding; Angel Pacheco, d/b/a Supreme Construction; Angel Caguana, d/b/a AJ Construction; Jorge Garcia, d/b/a JGC Painting; Stone Design LLC; JTCG Siding, LLC; Gabriela Mortera, d/b/a Quality Budget Painting; Marcello Morales, M&M Painting; Vlad, d/b/a Glass Resolution; Otero-Trejo LLC; Donald Patran; Jordan Reibing; Manny Hernandez; Danill Garbaly; John Santos, and Todd Katchman.

### **III. CONCLUSIONS OF LAW**

1. Respondent has committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701 and 326B.082, subd. 11 (b)(1) (2014).
2. Respondent contracted to perform or performed construction services for another person without first being registered in the Registration Program in violation of Minn. Stat. § 326B.701, subd. 5 (b)(1) (2014).
3. Respondent hired unregistered subcontractors. Minn. Stat. § 326B.701, subd. 5 (b) (2) (2014).
4. Respondent provided false or misleading information to the state in connection with the application for registration in violation of Minn. Stat. § 326B.082, subd. 11 (b)(2) (2014).

5. Respondent failed to cooperate with the Department's investigation by providing false or misleading information including copies of W-3 Transmittal of Wage and Tax Statements for 2015. Minn. Stat. § 326B.082, subd. 2 (3) (2014).
6. Respondent failed to meet the burden of proof that persons performing improvement services were independent contractors as the business entities did not meet the nine factor test as evidenced in Respondent's business records. Minn. Stat. § 181.723 subd. 4 (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](http://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).

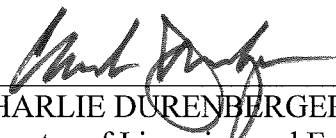
The monetary penalty assessed against the Respondent by this Licensing Order is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014). When this Licensing Order becomes final, the Commissioner may file and enforce any unpaid portion of the penalty 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: \_\_\_\_\_

7/28/16

KEN B. PETERSON  
Commissioner

BY: \_\_\_\_\_

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