

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Construction Contractor
Registration of MPV Construction LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

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

Pursuant to Minn. Stat. §§ 181.723, subd. 4(a)(1); 326B.082, subd. 12(b); and 326B.083 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$1,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12, and 326B.083 (2014) and Minn. Stat. § 326B.083 (2014), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR690724, until such time that Respondent provides a complete answer to the Commissioner’s November 13, 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 providing building construction or improvement services and holds construction contractor registration No. IR690724, issued on February 21, 2015. In its registration renewal, Respondent provided a business address of 1001 East 29th Avenue NE, Apt. 1, Minneapolis, MN 55418. Respondent also disclosed that it is owned by one individual, Marco Vinicio Pena-Romero (“Pena-Romero”).
2. According to the records of the Minnesota Secretary of State, MPV Construction LLC registered as a limited liability company on February 18, 2015 with a registered office address of 1001 East 29th Avenue NE, Apt. 1, Minneapolis, MN 55418.
3. As a registered construction contractor, Respondent must adhere to the Minnesota statutes and regulations governing Contractor Registration and the classification of

construction workers, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2015).

4. On November 4, 2015, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent and Pena-Romero based on information that they may have engaged in misclassification of their workers.
5. On November 13, 2015, a Department investigator sent Respondent a 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 required a response within 20 days.
6. Respondent returned a copy of the subpoena to the Department on November 28, 2015 on which it stated that Pena-Romero is 100% owner of MPV Construction LLC, which is a roofing business. Respondent claimed that it has no employees or subcontractors, and that it has not performed work for any contractors.
7. The Department investigator sent Respondent a warning letter via first class mail on November 30, 2015, requiring clarification of its response to the subpoena duces tecum. The warning letter also stated if Respondent was contracting directly with homeowners to perform roofing work, they would be required to hold a license rather than a contractor registration.
8. Respondent’s principal has maintained Worker’s Compensation and Employers’ Liability coverage since August 22, 2013. A subpoena duces tecum was issued to the Peralta Agency to provide a list of all contractors who have requested a Certificate of Insurance for Marco Vinicio Pena-Romero, d/b/a MPV Construction LLC since October 2013. Peralta Agency provided a total of four certificates issued to two different contractors.
9. The business records of one of the contractors, Arcentales Roofing LLC, show that Respondent received an IRS Form 1099 for work performed in both 2014 and 2015.
10. As of the date of this Order, Respondent has not provided a written explanation or any business documents to the Department as requested in the subpoena and warning letter.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723 (2014) and 326B.082, subd. 11 (b)(1) (2014).
2. Respondent failed to provide a complete and accurate response to 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), 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 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 (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 Respondents do 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).

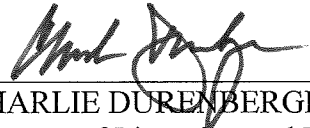
Respondent is prohibited from applying for reinstatement of its contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

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: 7/13/16

KEN B. PETERSON
Commissioner


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