

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Residential Building
Contractor License of Premier Remodeling LLC,
and Molly Grossman, Individually

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Premier Remodeling LLC and Molly Grossman (“Respondents”).

Pursuant to Minn. Stat. §§ 181.723, subd. 4; 326B.082, subd. 12(b); and 326B.083 (2014), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$12,000, of which \$2,000 is hereby forgiven pursuant to Minn. Stat. §326B.701, subd. 6 (2014).

Pursuant to Minn. Stat. § 326B.082, subs. 11(b) and 12, and 326B.083 (2014), the Commissioner hereby suspends the residential building contractor license of Respondents, No. BC669263, until such time that Respondents provide a complete answer to the Commissioner’s December 17, 2015 subpoena and pay the monetary penalty imposed herein.

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. According to the records of the Minnesota Secretary of State, Premier Remodeling LLC registered as a limited liability company on February 21, 2013 with a registered office address of 2091 Viburnum Trail, Eagan, MN 55122.
3. Respondents hold a residential building contractor license issued by the Department on June 19, 2013, No. BC669263. In its most recent license renewal, Respondents identified their business address as: 2091 Viburnum Trail, Eagan, MN 55122.

4. Respondents, as a licensed residential building contractor, must comply will all statutes and rules governing the residential 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).
5. 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.
6. On December 14, 2015, the Department opened an investigation of Respondents based on information that they may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
7. On December 17, 2015, a Department investigator sent Respondents 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.
8. On January 5, 2016, Respondents' attorney contacted the Department investigator and requested an extension until January 25, 2016 to respond to the subpoena and produce responsive documents. The extension was granted.
9. Respondents complied with the subpoena in part by providing copies of the construction contractor registrations of four subcontractors including: LT Brently LLC; Seamless-4-Less, LLC; Gopher State Property Preservations LLC; and M&M Roofing & Siding LLC. Respondents also provided two lists: one that contained dates, check numbers, and check amounts; and a second list that contained dates, dollar amounts, and persons' names including: Acme Awning; Mike Follmer; Angel Cerda Trevino; Luna Carpeting; ATG Restoration; Dennis Walker; Tagpaul Awtar; Valini Mohabir; Brainerd Lakes Construction; Daniel Lavalle; Wayne/ATG; Mandan Mangal; JS Exteriors; Xochitl Rojas Castillo; Lundy Construction; Castro Vasquez; Cortes Siding; Se Chan Na; WML; Midwest Roofing; McArthur; Edco; Norandex; Caleb Drentlaw; Flint Morrison; Miquel Overhead Door; Nick Murphy; Andrew Sweet-Norbloom; Twin Cities Granite; Kevter Construction; Demcon; Epic Granite; SV Painting LLC; Armando; Dale Green Company; Kennis Little; and Penazolas Construction.
10. The Department found that Respondents' business records do not support that all persons performing building construction or improvement services for Premier Remodeling LLC meet the nine factor test. Respondents did not submit bids, invoices, written contracts, or provide the subcontractor's legal business name, business address, and telephone number. The individual as owner or part owner of a business entity is presumed to be an employee of the person for whom the individual is performing services for unless: the business entity meets the nine factor test; invoices and payments are in the name of the business entity; and the business entity is registered with the Secretary of State, if required.
11. The Department investigator sent Respondents a warning letter via email on March 15, 2016 and again on May 18, 2016 requiring a complete response to the subpoena duces tecum. Respondents' attorney received a copy of the emails.

12. As of the date of this Order, Respondents have not provided a complete response to the subpoena duces tecum.

III. CONCLUSIONS OF LAW

1. Respondents committed a violation of applicable law. Minn. Stat. §§ 181.723 (2014) and 326B.082, subd. 11 (b)(1) (2014).
2. Respondents failed to provide a complete and accurate response to a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11 (b)(6) (2014).
3. Respondents hired persons that were neither licensed by the Department nor registered in the Registration Program to provide construction services on Respondents' behalf and treated them as independent contractors in violation of Minn. Stat. § 326B.701, subd. 5 (b)(2) (2014).
4. Respondents misclassified more than ten workers who failed to meet the factors required by Minn. Stat. § 181.723 subd. 4(a) and (b) (2014) in order to qualify to be treated as independent contractors.

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), Respondents 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 12(c) (2014).

If Respondents 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 Respondents' 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).


Respondents may not apply for reinstatement of their residential building contractor license until full compliance with the terms of this Licensing Order is achieved, including the submission of a complete and accurate response to the December 15, 2015 subpoena and subsequent Department correspondence, payment of the non-forgiven portion of the monetary penalty, and payment of a \$50.00 license reinstatement fee.

The portion of the monetary penalty assessed against the Respondents by this Licensing 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 monetary penalty assessed against the Respondents by this Licensing Order other than the forgiven portion 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), Respondents are 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