

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Construction Contractor
Registration of Ruby Construction L.L.C.
and Maria Alvarado-Vital, Individually

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Ruby Construction L.L.C. and Maria Alvarado-Vital (“Respondents”).

Pursuant to Minn. Stat. §§ 181.723, subd. 4(a)(1); 326B.082, subd. 12(b); and 326B.083 (2014), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$5,000.

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 Respondents, No. IR703090, until such time that Respondents provide a complete answer to the Commissioner’s January 6, 2016 subpoena and pay the monetary penalty imposed herein.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2014), the Commissioner also hereby orders Respondents and their 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. Respondents are engaged in the business of providing building construction or improvement services and hold construction contractor registration No. IR703090 issued on January 21, 2016.
2. According to the records of the Minnesota Secretary of State, Ruby Construction L.L.C. (“Ruby”) registered as a limited liability company on June 16, 2014 with a registered office address of 3406 Oliver Avenue N., Minneapolis, MN 55412, the same address Respondents provided in their Registration Program registration.

3. As registered construction contractors, Respondents 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 December 16, 2015, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondents based on information that they may have engaged in in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
5. On January 6, 2016, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondents at 3406 Oliver Avenue N., Minneapolis, MN 55412. The subpoena required the production of documentation relating to Respondents’ subcontractors, contractors, and employees. The certified mail was returned by the United States Postal Service marked “Unclaimed.”
6. On January 21, 2016, a third party agent registered Ruby in the Registration Program.
7. On July 11, 2016, the Department investigator mailed a warning letter to the Respondents requesting compliance and a written response to the subpoena duces tecum.
8. Ruby has maintained a workers’ compensation insurance policy since September 20, 2014.
9. According to the business records of another contractor, Ruby performed building construction and improvement services from November 2014 through May 7, 2015, as an unregistered contractor.
10. On July 26, 2016, the Department issued an Administrative Subpoena Duces Tecum to Unidale Insurance Agency (“Unidale”), requiring the production of a list of all contractors who have requested a Certificate of Insurance for Ruby since September 2014.
11. Unidale responded with the requested documents on August 2, 2016 indicating that 14 certificates were issued for the insured Ruby Construction L.L.C.
12. The Department has not received a reply from Respondents as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondents committed violations of applicable law. Minn. Stat. §§ 181.723 (2014) and 326B.082, subd. 11 (b)(1) (2014).
2. Respondents contracted to perform or performed construction services for another person without first being registered in the Registration Program or licensed by the Department in violation of Minn. Stat. § 326B.701, subd. 5 (b)(1) (2014).
3. Respondents failed to comply with 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 violations were willful; the gravity of the violations; 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, subds. 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 are prohibited from applying for reinstatement of their contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

The monetary penalty assessed against the Respondents 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: 8/8/16

KEN B. PETERSON
Commissioner


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