

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Absolute Drywall, Inc.

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Absolute Drywall, Inc. (“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 \$3,000, of which \$2,000 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. FINDINGS OF FACT

1. Respondent is a registered contractor holding registration No. IR654043. Respondent’s business address is: 10100 166th St. W., Lakeville, MN 55044. Respondent, as a registered contractor, must adhere to the Minnesota statutes and regulations governing contractor registration and worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2015).
2. On June 22, 2010, the Commissioner executed a Consent Order by which Respondent agreed to pay a \$45,000 monetary penalty, of which \$40,000 was stayed contingent on Respondent’s compliance with the terms of the Consent Order and the commission of no future violations of any law or rule over which the Commissioner has authority.
3. On May 26, 2015, the Minnesota Department of Labor and Industry (“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.
4. On June 30, 2015, a Department investigator mailed a subpoena duces tecum to Respondent.
5. Based on a review of Respondent’s answer to the subpoena, the Department determined the following:

- Respondent stated that it “doesn’t have/use contracts with our jobs”
- Respondent hired and paid the following subcontractors to perform building construction services and treated them as independent contractors despite the fact that they were not licensed by the Department or registered in the Registration Program at the time they performed services on Respondent’s behalf: ECA Drywall, LLC, Enriquez Drywall, LLC, FDS Drywall, LLC, Jeff Lafontaine, North Star Texturing, LLC, Riverside Drywall, LLC, Ruby Drywall, LLC, Rudy’s Drywall, LLC, Stubbs Builders Inc. and Twin Cities Drywall, LLC. PBy operation of law, these unregistered and unlicensed contractors are deemed to be employees of Respondent.
- Respondent hired and paid Alamo Drywall, LLC (“ADL”). ADL’s registration was suspended due to its failure to meet the factors required by Minn. Stat. § 181.723 subd. 4(b) (2014) in order to qualify to be treated as an independent contractor. Specifically, ADL started performing services before it was registered and its business registration with the Minnesota Secretary of State was administratively dissolved in August 2012.
- Respondent hired and paid El Gallos Drywall, LLC (“EGDL”) before it was registered. EGDL’s registration with MN SOS was administratively dissolved in July 2015. EGDL failed to maintain a separate business. EGDL is deemed to be an employee of Respondent.

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 in 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 employees. Minn. Stat. § 181.723, subd. 7(a)(1)(3) and 7(b)(3)(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 \$3,000 monetary penalty, \$2,000 was assessed for hiring unregistered subcontractors and was forgiven. The \$1,000 portion of the penalty that was not forgiven was assessed for misclassifying an employee who failed to meet the nine factor test 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, 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.

VI. EFFECT OF FINAL ORDER

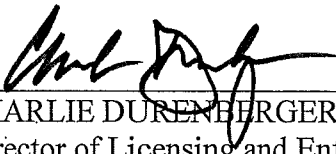
If Respondent does not request a hearing or Respondent's request for a hearing is not served on or faxed to the Commissioner by 30 days after issuance of this Licensing Order, this Licensing Order shall become a final order of the Commissioner and will not be subject to review by any court or agency. *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: 8/18/16

KEN B. PETERSON
Commissioner


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