

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Gabriel Lebaron

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Gabriel Lebaron (“Respondent”).

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 7; and 326B.083 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$1,000.

The Commissioner also hereby orders Respondent to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondent, individually or doing business in any business name, to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which licensure or registration in the Construction Contractor Registration Program (“Registration Program”) is required in the state of Minnesota.

The Commissioner takes the above action based upon the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

1. Respondent is the sole principal and chief manager of Mud Pro Drywall LLC (“MPDL”), a contractor registered with the Minnesota Department of Labor and Industry (“Department”) through the Registration Program, registration Nos. IR659851 and IR698355. The business address MPDL provided when it registered is: 16962 Kenrick Ave., No. 27, Lakeville, MN 55044.
2. On October 16, 2015, the Department opened an investigation of Respondent and MPDL based on information that indicated that Respondent and his company may have engaged in violations of the statutes and rules governing the classification of workers in the construction industry.
3. On December 3, 2015, a Department investigator sent Respondent and MPDL a subpoena duces tecum requiring the production of records and other information relating to Respondent and MPDL’s contractors, subcontractors and employees.
4. On December 23, 2015, Respondent sent a partial answer to the subpoena including copies of MPDL’s 2013 and 2014 business tax returns.

5. On January 14, 2016, the Department investigator sent Respondent and MPDL a letter requesting a complete answer to the subpoena duces tecum including MPDL's copies of the IRS forms 1099 that it issued to its subcontractors for 2014 and 2015, and copies of receipts to prove some of the expenses claimed on MPDL's business tax returns.
6. On January 25, 2016, Respondent called the Department investigator and stated that he did not have most of the receipts and that he paid his subcontractors in cash as long as they had workers' compensation insurance. Respondent said that he would look for the forms 1099 issued to his subcontractors for 2014 and 2015.
7. Respondent failed to respond to this request for additional information.
8. After reviewing the partial response to the subpoena that Respondent provided, the Department determined that in 2013 and 2014, Respondent hired and paid LCP Drywall, LLC and Vazquez Drywall, LLC for the performance of building construction or improvement services and treated them as independent contractors even though they were not licensed by the Department or registered in the Registration Program at the time they performed construction services on Respondent's behalf.
9. As part of its investigation, the Department obtained evidence that MPDL performed services for Absolute Drywall, Inc. ("ADI") and was paid \$26,595 between September 2012 and December 2012. Because MPDL was not registered when it began performing services for ADI, Respondent is deemed to have been an employee of ADI for that period of time.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. §§ 181.723 and 326B.082, subd. 11(b)(1) (2014).
2. Respondent failed to provide a complete answer to the subpoena issued by the Commissioner in violation of Minn. Stat. §§ 326B.082, subd. 11(b) (6) (2014).
3. Respondent is deemed to have been an employee of Absolute Drywall, Inc. from September 2012 through December 2012. Minn. Stat. § 181.723, subs. 3 and 4(b) (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. 8 (2014), Respondent shall have 30 days after issuance of this Administrative 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. The request for hearing must specifically state the reasons for seeking review of the order or notice. 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 8 (2014).

If the Respondent submits to the Commissioner a timely request for hearing, the Administrative 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 Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.5010 to 1400.8400 (2015), and Minn. Stat. § 326B.082, subd. 8 (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 the deadline specified in the "Request for Hearing" section of this Administrative Order, this Administrative 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. 8 (2014).


The monetary penalty assessed upon Respondent by this Administrative Order is due and payable on the date the Administrative Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014).

When this Administrative 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 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(s) is/are hereby notified that thirty (30) days after the date this Administrative 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