

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Marciano Carrto Construction LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry ("Commissioner") issues this Order against Marciano Carrto Construction LLC ("Respondent").

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2014), the Commissioner hereby assesses against Respondent a monetary penalty of \$5,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2014) and Minn. Stat. § 326B.083 (2014), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR653882, until such time that Respondent provides a complete answer to the Commissioner's April 25, 2016 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, 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.

Pursuant to Minn. Stat. § 326B.082, Subd. 11(a) (b)(5) (2014), the Commissioner also hereby orders Respondent and its principal to cease and desist from registering in the Registration Program under the business name Marciano Carrto Construction LLC or any other business name.

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 held a construction contractor registration, No. IR653882, issued by the Commissioner on September 10, 2012. In its registration, Respondent asserted that it is owned by Marciano Carreto and that its business address is 620 E. 78th Street #104, Richfield, MN.
2. As a registered construction contractor, Respondent must adhere to the Minnesota statutes and regulations governing Contractor Registration and construction worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2015).
3. As a result of a review of the records of Scherer Bros. Lumber Co., the Minnesota Department of Labor and Industry ("Department") opened an investigation of Respondent on April 18, 2016 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. According to the records of the Minnesota Secretary of State, Marciano Carrto Construction LLC has a registered address of 2422 Dupont Ave. N., Minneapolis, MN and a Principal Executive Office at 620 East 78th Street #104, Richfield, MN. Marciano Carreto is listed as the manager.
5. According to the records of the Hennepin County Court, Marciano Carreto-Vasquez has a home address of 620 East 78th Street #104, Richfield, MN.
6. On April 25, 2016, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at its 620 East 78th Street #104, Richfield, MN address with a copy to the 2422 Dupont Avenue North address.
7. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees. Both the certified and first-class mail was returned marked "Unable to Forward" by the United States Postal Service ("USPS"). The letter to the Dupont Avenue North address was not returned.
8. June 6, 2016, the Department investigator mailed a second request for information to Respondent at both the Richfield and the Dupont Avenue North address. The letter was not returned by the USPS.
9. Both the subpoena and supplemental request for information required a response from Respondent within 30 days of the Commissioner's service of the same.
10. The Commissioner has received no reply from Respondent as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2014).
2. Respondent 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 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.

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).

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: 8/30/16

KEN B. PETERSON
Commissioner

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