

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Mud Pro Drywall LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Mud Pro Drywall 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 \$2,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2014) and Minn. Stat. § 326B.083 (2014), the Commissioner hereby suspends the Contractor Registrations of Respondent, Nos. IR659851 and IR698355, until such time that Respondent provides a complete answer to the Commissioner’s December 3, 2015 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 the 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. Respondent is engaged in the business of performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required.
2. Respondent is registered with the Registration Program, registration Nos. IR659851 and IR698355. In its registrations, Respondent identified its business address as: 16962 Kenrick Ave., No. 27, Lakeville, MN 55044.
3. Respondent, as a registered contractor, must adhere to the Minnesota statutes and rules governing contractor registration and worker classification, Minn. Stat. §§ 181.723(2014); 326B.701; and 326B.081 to 326B.085 (2014), and Minn. Rules Chapter 5224 (2015).

4. On October 16, 2015, the Minnesota Department of Labor and Industry ("Department") opened an investigation of Respondent based on information that indicated that Respondent may have engaged in violations of the statutes and rules governing the classification of workers in the construction industry.
5. On December 3, 2015, a Department investigator sent Respondent a subpoena duces tecum requiring the production of records and other information relating to Respondent's contractors, subcontractors and employees. The subpoena required a response within 20 days and was mailed via first-class and certified mail.
6. On December 23, 2015, Respondent sent a partial answer to the subpoena including its 2013 and 2014 business tax returns.
7. On January 14, 2016 the Department investigator sent Respondent a letter requesting a complete answer to the subpoena duces tecum including copies of IRS forms 1099 issued to its subcontractors for 2014 and 2015, and copies of receipts to prove some of the expenses claimed on Respondent's business tax returns.
8. On January 25, 2016, Gabriel Lebaron, sole owner of Respondent, called and stated that he did not have most of the receipts and that he paid his subcontractors in cash as long as they had worker's compensation insurance. Lebaron said that he would look for the forms 1099 issued to his subcontractors for 2014 and 2015.
9. Respondent failed to provide a complete answer to the subpoena.
10. After reviewing Respondent's partial response to the subpoena, the Department determined that in 2013, Respondent hired and paid Ayala Cano Drywall, LLC, FDS Drywall, LLC and Abacu Penaloza 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.
11. The Department also determined that Respondent's relationships with the persons it identified as independent contractors failed to meet the factors required by Minn. Stat. § 181.723 subd. 4(a) and (b) (2)(3)(2014) . Consequently, Respondent misclassified employees as independent contractors.
12. As part of its investigation, the Department obtained evidence that Respondent performed services for Absolute Drywall, Inc. ("ADI") and was paid \$26,595 between September 2012 and December 2012. Because Respondent was not registered when it began performing services for ADI, its owner is deemed to have been an employee of ADI for that period of time.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2014).
2. Respondent failed to provide a complete answer to a subpoena issued by the Commissioner. Minn. Stat. §§ 326B.082, subds. 2 and 11 (b)(6) (2014).
3. Respondent hired persons that 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 as independent contractors in violation of Minn. Stat. § 181.723 subd. 4(a) and (b)(2014).
5. Respondent's principal is deemed to have been an employee of Absolute Drywall, Inc. between September 2012 and December 2012. Minn. Stat. § 181.723, subds. 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 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: 8/18/16

KEN B. PETERSON
Commissioner

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