

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Jose Rodriguez Capuchino

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Jose Rodriguez Capuchino (“Respondent”).

Pursuant to Minn. Stat. §§ 181.723; 326B.082, subd. 7; and 326B.083 (2014), the Commissioner hereby assesses against Respondent, a monetary penalty of \$7,000, \$2,000 of which shall be forgiven if Respondent demonstrates to the Commissioner by the 31st day after this Administrative Order is issued that Respondent successfully registered with the Minnesota Construction Contractor Registration Program (“Registration Program”).

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 to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required. The cease and desist order remains in effect until compliance with the registration requirements of Minn. Stat. § 326B.701, subd. 2(b) (2014) is achieved and Respondent provides a complete response to the Commissioner’s May 16, 2016 subpoena duces tecum.

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 was identified as a subcontractor in the business records of Masterpiece Floors, LLC. Respondent is neither licensed by the Minnesota Department of Labor and Industry (“Department”) nor registered with the Registration Program.
2. An IRS Form 1099 for 2015 was issued by Masterpiece Floors, LLC to Jose Capuchino at 613 5th Street SW, Apt. 2, Waseca, MN 56093. The Form 1099 shows nonemployee compensation of \$165,509.14 was paid to Respondent in 2015.
3. On May 11, 2016, the 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 May 16, 2016, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent. The subpoena required the production of documentation relating to Respondent' subcontractors, contractors, and employees. The certified letter was returned by the United States Postal Service marked as "Unable to Forward."
5. The Department has not received a reply from Respondent as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 7 (2014).
2. Respondent provided building construction or improvement services without being registered with the Registration Program. Minn. Stat. § 326B.701, subd. 2 (2014).
3. 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 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. 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 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 \$5,000 portion of the monetary penalty assessed upon Respondent by this Administrative Order that is not forgivable is due and payable on the date the Administrative Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014). The \$2,000 portion of the monetary penalty imposed upon Respondent by this Administrative Order is forgivable. However, if the Commissioner determines that Respondent failed to successfully register in the Registration Program within 31 days after the issuance of this Administrative Order, then the forgivable portion of the penalty is due and payable 20 days after the Commissioner serves notice of this determination or on the date this Administrative Order becomes final, whichever is later. *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 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: 10/21/16

KEN B. PETERSON
Commissioner



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