

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Craig Geron Decorating Artists, Inc.

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Craig Geron Decorating Artists 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 \$4,500, \$2,000 of which 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 engaged in the business of providing building construction or improvement services and holds a construction contractor registration, No. IR699384, issued by the Commissioner on September 23, 2015.
2. As a registered construction contractor, Respondent must adhere to the Minnesota statutes and regulations governing Contractor Registration and the classification of workers in the building construction industry, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2015).
3. On May 3, 2016, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent based on information obtained in the course of an investigation of another contractor that indicated Respondent may have engaged in violations of the Minnesota statutes and rules governing worker classification in the building construction industry.
4. On May 18, 2016, a Department investigator served Respondent with a subpoena duces tecum that required Respondent to provide information regarding the contractors for which Respondent had performed building construction or improvement services as well as Respondent’s own independent contractors and employees.
5. Based on a review of Respondent’s answer to the subpoena, the Department determined that between October 1, 2012 and May 18, 2016, and Respondent paid the following

persons for the performance of building construction or improvement services on Respondent's behalf 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: Mike Thune Productions, Aalgaard Painting, First Class Painting, Ellenson Caulking Co. and R. T. Elite, Inc.

6. The Department's review of the information provided by Respondent also found that the persons listed above had entered into a contract to provide services under the following conditions: "The bid process is not necessarily written, but based on the total hours to complete. An hourly rate was applied to the hours and total budget was determined. As time was put into the project it was paid."
7. The Department 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) (2014). Consequently, Respondent misclassified employees as independent contractors.

III. CONCLUSIONS OF LAW

1. Respondent contracted to perform or performed building construction or improvement services without first being registered in the Registration Program in violation of Minn. Stat. § 326B.701, subd. 5 (b)(1) (2014).
2. 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).
3. Respondent misclassified employees as independent contractors in violation of Minn. Stat. § 181.723 subd. 4(a) and (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.

Of the \$4,500 monetary penalty, \$2,000 was assessed for hiring unregistered subcontractors and was forgiven. The \$2,500 portion of the penalty that was not forgiven was assessed for misclassifying employees 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 portion of the monetary penalty assessed against Respondent by this Licensing Order for hiring unregistered subcontractors is forgiven, but the violations alleged herein shall be deemed evidence of a history of a violation for hiring an unregistered subcontractor for purposes of calculating a monetary penalty for any future violation Minn. Stat. § 326B.701, subd. 5 (b)(2) (2014).

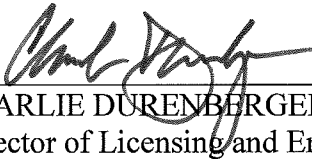
The monetary penalty assessed against the Respondent by this Licensing Order, other than the forgiven portion, is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014). When this Licensing Order becomes final, the Commissioner may file and enforce 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: 11/18/16

KEN B. PETERSON
Commissioner


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