

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of FDS Drywall, LLC, and
Francisco J de Santiago, Individually

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against FDS Drywall, LLC, and Francisco J de Santiago, individually (“Respondents”).

Pursuant to Minn. Stat. §§ 326B.701 (2014); 326B.082, subd. 7 (2014) and 326B.083 (2014) the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$5,000.

The Commissioner also hereby orders Respondents to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondents 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 until such time that Respondents provide a complete answer to the Commissioner’s January 19, 2016 subpoena and pay the monetary penalty assessed herein.

The Commissioner takes the above action based upon the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

1. Respondents are engaged in the business of providing building construction or improvement services, but have not registered with the Registration Program.
2. According to the records of another contractor that were obtained during the course of an investigation of the other contractor conducted by the Minnesota Department of Labor and Industry (“Department”), Respondent has a business address of 503 Sunny Acres Ln., Burnsville, MN 55306.
3. The Department’s investigation determined that Respondent received a total amount of \$56,848.28 in 2013 and 2014 from Absolute Drywall, Inc.
4. According to the records of the Minnesota Secretary of State, the business filing of FDS Drywall LLC is inactive. Francisco J de Santiago is listed as the registered agent in the business filing with the Secretary of State. Respondent’s registered office is: 10761 Smetena Rd, #203, Minnetonka, MN. The Manager’s address is: 1030 Feltl Court, Apt 248, Hopkins, MN.

5. On January 19, 2016, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondents at both of the addresses provided above. The subpoena required the production of documentation relating to Respondents' subcontractors, contractors, and employees. The subpoena required a response within 20 days.
6. On February 18, 2016 the subpoenas sent via certified mail were returned as they were "unclaimed" and the USPS was "unable to forward." The letter sent via first-class mail to the Minnetonka address was not returned by the USPS. The letter sent to the Hopkins address was returned as it was "not deliverable as addressed."
7. On January 11, 2016, the Department investigator mailed a second request for information to Respondents. This letter was not returned by the USPS.
8. The Commissioner has not received a reply from Respondents as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondents committed violations of applicable law. Minn. Stat. §§ 181.723; Minn. Stat. §§ 326B.701 and 326B.082, subd. 7 (2014).
2. Respondents 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 Respondents 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), Respondents 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 8 (2014).

If Respondents submit 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 Respondents do not request a hearing or Respondents' 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 Respondents 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), Respondents 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: 11/4/16

KEN B. PETERSON
Commissioner

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