

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Jairo A. Diaz Hernandez

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Jairo A. Diaz Hernandez (“Respondent”).

Pursuant to Minn. Stat. §§ 326B.701 (2014); 326B.082, subd. 7 (2014) and 326B.083 (2014) the Commissioner hereby assesses against Respondent a monetary penalty of \$2,000.

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, individually and doing business in any business name, to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which licensure or registration in the Construction Contractor Registration Program (“Registration Program”) is required in the state of Minnesota.

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

II. FINDINGS OF FACT

1. Respondent is the sole principal of Midwest Roofing Corporation (“Midwest”), a contractor registered in the Registration Program, registration No. IR711758. In its July 27, 2016 registration, Midwest identified its mailing address as 188 Judith Drive, Chaska, MN 55318. Midwest’s current registration is valid through December 31, 2017.
2. Prior to its current registration, Midwest held registration No. IR694693, which expired on December 31 2015. In the application, Respondent identified its mailing address as 205 Crosstown Blvd. Apt. #212, Chaska, MN 55318, and disclosed that Jairo A. Diaz Hernandez is the sole owner of the business. A registration renewal reminder card was returned by the United States Postal Service (“USPS”) and marked as “Undeliverable.”
3. According to the records of the Minnesota Secretary of State, Respondent filed Midwest Roofing Corporation as a business corporation on April 2, 2015 with a registered office address of 205 Crosstown Blvd. Apt. #212, Chaska, MN 55318.

4. On August 9, 2016, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent and his company based on information that indicated Respondent may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
5. On August 24 2016, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at its registered address as well as to the address reported in the construction contractor registration application. The subpoena required the production of documentation relating to Respondent’s subcontractors, contractors, and employees. The certified letter mailed to 188 Judith Drive was returned by the USPS marked “Unclaimed.” The certified letter and first-class letter mailed to the Crosstown Blvd. address were returned by the USPS as “Unable to Forward.”
6. Midwest has maintained a workers’ compensation insurance policy from May 15, 2015 to the date of this Order.
7. On September 20, 2016, the Department issued an Administrative Subpoena Duces Tecum to Unidale Insurance Agency (“Unidale”), requiring the production of a list of all contractors who have requested a certificate of insurance for Midwest since April 2015.
8. Unidale responded with the requested documents on October 6, 2016 indicating that five certificates were issued for the insured Midwest and affirming that Jairo A. Diaz Hernandez is the sole owner of the business.
9. On October 7, 2016, the Department investigator mailed a warning letter to the Respondent requesting compliance and a written response to the subpoena duces tecum.
10. The Commissioner has not received a 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. 7 (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. 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, subsd. 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 (2013), 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

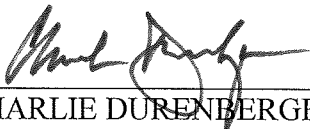
If Respondent does not request a hearing or Respondent's request for a hearing is not served on or faxed to the Commissioner by the deadline specified in the "Request for Hearing" section of this Administrative Order, this Administrative Order shall become a final order of the Commissioner and will not be subject to review by any court or agency. *See* Minn. Stat. § 326B.082, subd. 8 (2014).

The monetary penalty assessed upon Respondent 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), Respondent is 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: 11/9/16

KEN B. PETERSON
Commissioner


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