

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
City Brothers Construction LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against City Brothers Construction LLC (“Respondent”).

Pursuant to Minn. Stat. §§ 326B.082, subd. 6; 326B.082, subd. 12 (b); 326B.083 (2016); and 326B.701 (2016), the Commissioner hereby assesses against Respondent a monetary penalty of \$12,000, of which \$2,000 is hereby forgiven pursuant to Minn. Stat. §326B.701, subd. 6 (2016).

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby suspends the construction contractor registration of Respondent, No. IR691983, until such time that Respondent provides a complete answer to the Commissioner’s March 10, 2016 subpoena and pays the portion of the monetary penalty imposed herein that is not forgiven.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), the Commissioner also hereby orders Respondent and its principals, during the period of 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.

Pursuant to Minn. Stat. § 326B.082, Subd. 11(a) (b)(5) (2016), the Commissioner also hereby orders Respondent and its principals to cease and desist from registering in the Registration Program under the business name City Brothers Construction LLC or any other business name.

The Commissioner takes the above action based upon the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

1. Minn. Stat. § 326B.701, subd. 2 (2016) requires all contractors who intend to provide commercial or residential building construction or improvement services in Minnesota to be registered with the Minnesota Department of Labor and Industry (“Department”)’s Construction Contractor Registration Program (“Registration Program”) if they are not required to hold a license issued by the Department.

2. Pursuant to Minn. Stat. § 181.723, subd. 3 (2016), an individual who performs services for a person that are in the course of the person's trade, business, profession, or occupation is an employee of that person and that person is an employer of the individual unless the individual meets all nine factors described in Minn. Stat. § 181.723, subd. 4(a) (2016) ("the nine factor test"). If the individual cannot meet all nine factors, he or she is deemed to be an employee of the person that hired the individual.
3. Minn. Stat. § 181.723, subds. 4(a) and 4(b) (2016) also states that an individual who is required to be registered in the Registration Program but who fails to do so, is presumed to be an employee of any person that hires the individual to perform services on the person's behalf. However, the person for whom the services were performed may rebut this presumption by showing that the unregistered individual met all nine factors of the nine factor test at the time the services were provided.
4. According to the records of the Minnesota Secretary of State, City Brothers Construction LLC filed as a limited liability company on November 17, 2014 with a registered office address of 14500 34th Avenue N. #203, Plymouth, MN 55407. The manager is listed as Jhon (sic) Sanchez, 1611 E. Lake Street, Minneapolis, MN 55407.
5. Respondent holds a construction contractor registration issued by the Minnesota Department of Labor and Industry ("Department") on March 23, 2015, No. IR691983. In its registration application, Respondent identified its mailing address as 14500 34th Avenue N. #203, Plymouth, MN 55447, and disclosed that Hermilio Cruz Hernandez ("Hernandez") is the sole owner of the business. The telephone number listed for Hernandez on the registration application rings to a business located at 1611 E. Lake Street, Minneapolis, MN. The other telephone number listed on the registration application for the business is the cell phone number of John Sanchez.
6. In October 2015, a registration renewal reminder card was mailed to Respondent. The card was returned by the United States Postal Service ("USPS") and marked as "Undeliverable," so an enforcement hold was placed on the registration renewal pending verification of the legal address of the business.
7. On February 23, 2016, the Department was notified by telephone that the business address for Respondent had changed. An address verification letter was mailed to 5840 Teakwood Lane, Unit A, Plymouth, MN 55402.
8. On February 29, 2016, the Department received a signed copy of the address verification letter from Respondent indicating receipt at the address provided. The enforcement hold was lifted, and the Respondent was able to renew its contractor registration. The certification of the renewal was signed electronically by Hermilio Cruz Hernandez with an email for John Sanchez ("Sanchez"), who is also listed as the contact name on record for the registered business.
9. Respondent, as a registered contractor, must comply with all statutes and rules governing the residential and commercial construction industry, including contractor registration and worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2016) and Minn. R. Chapter 5224 (2015).

10. Minn. Stat. § 326B.701, subd. 5 (2016) prohibits a contractor from hiring another contractor to perform building construction services unless the contractor being hired is licensed with the Department or registered in the Registration Program.
11. On March 7, 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. Records obtained in a related investigation of a licensed contractor show that Sanchez was the signer and contact person for Respondent on contracts, invoices, the authorization for direct deposit into a Wells Fargo bank account, and the receiver of remittance advice on account.
12. On March 10, 2016, a Department investigator mailed a subpoena duces tecum to Respondent. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees. The certified letter and first-class letter mailed to 14500 34th Avenue N. #203, Plymouth, MN 55447 were returned by the USPS marked "Attempted – Not Known." The first-class letters mailed to the East Lake Street and Teakwood addresses were not returned.
13. Respondent complied with the subpoena in part by providing a list of six subcontractors that were paid more than \$469,000 for performing construction or improvement services in 2015. Respondent did not provide contracts, bids, or invoices for the subcontractors. Of the six subcontractors, three subcontractors have had their contractor registrations suspended as of the date of this Order for their failure to respond to subpoenas issued by the Commissioner.
14. Based on its review of Respondent's response, the Department determined that between January 2015 and December 31, 2015, Respondent paid Lagunilla Roofing LLC ("Lagunilla") for the performance of building construction or improvement services and treated it as an independent contractor despite the fact that the contractor was not licensed by the Department or registered in the Registration Program at the time it performed construction services on Respondent's behalf. Respondent's records show that Lagunilla was paid almost \$270,000 between July 2, 2015 and December 30, 2015, yet there is no evidence of contracts, bids, or invoices. The contractor registration for Lagunilla Roofing LLC is currently suspended.
15. Respondent provided a copy of its business tax form, 2015 Schedule C, which alleges \$474,161 as contract labor business expense. According to the Minnesota Department of Revenue, there is no record of Respondent's business tax filing. There is an individual tax filing based on W-2 earnings in 2015 for Hernandez as an employee of another company. A similar check with the Minnesota Department of Employment and Economic Development revealed that City Brothers Construction LLC does not have an unemployment insurance account. However, wages for Hermilio Cruz Hernandez, have been reported through the third quarter of 2016, again from another company.
16. Respondent provided copies of 2015 Form 1099s issued to City Brothers Construction LLC from other contractors. Five of six 1099s report a business address of 1611 East Lake Street.

17. On April 5, 2016, the Worker's Compensation policy was cancelled due to nonpayment of premiums.
18. On April 27, 2016, Hernandez complied with an Order to Appear and was accompanied by Sanchez. Both individuals provided their government issued identification. During the course of the interview, Mr. Sanchez provided most of the background on the business, alleging that his brother-in-law was limited in speaking English. Hernandez was questioned about the East Lake Street address and he did not know how it was associated with the business. Sanchez explained that his (Sanchez) father's secretary completed the initial application and that the address is associated with his father's business.
19. Hernandez provided a copy of his Minnesota Driver's License issued in December 2015 which shows a home address of Clinton Avenue South. Hernandez also completed a Department Business/Contractor Address Change Form, and then certified that the information on the form is correct and accurate. Hernandez's signature and writing do not match those on other documents submitted to the Department. Sanchez stated that he resides at the Teakwood address although his Minnesota Driver's License issued August 2013 reflects 14500 34th Avenue N., #203 in Plymouth, MN.

III. CONCLUSIONS OF LAW

1. Respondent has committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701 and 326B.082, subd. 11 (b)(1) (2016).
2. Respondent contracted to perform or performed construction services for another person without first being registered in the Registration Program in violation of Minn. Stat. § 326B.701, subd. 5 (b)(1) (2016).
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) (2016).
4. Respondent failed to cooperate with the Department's investigation by providing false or misleading information including business documents and copies of 2015 Tax Records. Minn. Stat. § 326B.082, subd. 11(b)(8) (2016).
5. Respondent provided false or misleading information to the state in connection with the application for registration in violation of Minn. Stat. § 326B.082, subd. 11 (b)(2) and (b)(3) (2016). Business documents received from Respondent, and those collected in the course of the investigation, reveal that John Sanchez is the point of contact in written communication and by telephone.

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. 12(c) (2016), 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) (2016).

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) (2016). 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

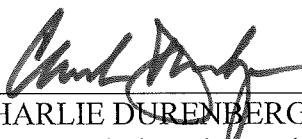
If Respondent does not request a hearing or Respondent's request for a hearing is not served on or faxed to the Commissioner by 30 days after issuance of this Licensing Order, this Licensing Order shall become a final order of the Commissioner and will not be subject to review by any court or agency. *See* Minn. Stat. § 326B.082, subd. 12(c) (2016).

The portion of the monetary penalty assessed against the Respondent by this Licensing Order for hiring unregistered subcontractors is forgiven, but the violation 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 of Minn. Stat. § 326B.701, subd. 5 (b)(2) (2016).

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) (2016). 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 (2016) and 326B.083, subd. 2 (2016). 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 (2016). Also, pursuant to Minn. Stat. § 16D.13 (2016), 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 (2016) will begin to accrue on the unpaid portion of the penalty.

Dated: 12/16/16

KEN B. PETERSON
Commissioner

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