

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Construction Contractor
Registration of Diaz Construction & Remodeling Inc.

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Diaz Construction & Remodeling Inc. (“Respondent”).

Pursuant to Minn. Stat. §§ 181.723, subd. 4(a)(1); 326B.082, subd. 12(b); and 326B.083 (2016), the Commissioner hereby assesses against Respondent a monetary penalty of \$3,000 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, and 326B.083 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR688772, until such time that Respondent pays the monetary penalty imposed herein.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), the Commissioner also hereby orders Respondent and its principal(s), 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 principal to cease and desist from registering in the Registration Program under the business name Diaz Construction & Remodeling Inc. 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. Respondent holds a construction contractor registration issued by the Minnesota Department of Labor and Industry (“Department”) on December 18, 2014, No. IR688772. In its most recent renewal, Respondent identified its address as 2324 Wentworth Avenue, South St. Paul, MN 55075 and disclosed that Armando Diaz (“Diaz”) is the sole owner and officer of Diaz Construction & Remodeling Inc.

2. Respondent held two prior construction contractor registrations, Nos. IR655362 issued September 16, 2012, and IR678750 issued March 22, 2014. Both of these registrations expired on December 31, 2015 and have not been renewed.
3. According to the records of the Minnesota Secretary of State, Diaz Construction & Remodeling LLC registered as a limited liability company March 21, 2011 with a registered office address of 2324 Wentworth Avenue, South St. Paul, MN 55075. The limited liability company was converted to a business corporation on August 7, 2014.
4. As a registered construction contractor, Respondent must adhere to the Minnesota statutes and regulations governing Contractor Registration and the classification of construction workers, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2016) and Minn. R. Chapter 5224 (2015).
5. On August 18, 2016, the Department opened an investigation of Respondent based on information that it may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
6. On August 30, 2016, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at its registered address. The certified letter was returned by the USPS and marked "Unclaimed." The first class letter was not returned.
7. Respondent has maintained a workers' compensation insurance policy from April 9, 2013 to the date of this Licensing Order.
8. According to the payment records of another contractor, Respondent has been paid in excess of \$88,000 for building construction or improvement services since May 2015.
9. On September 30, 2016, the Department investigator mailed a warning letter to the Respondent requesting compliance and a written response to the subpoena duces tecum no later than October 14, 2016.
10. On October 10, 2016, Diaz called the Department investigator to acknowledge receipt of the warning letter and asked for a copy of the subpoena. A copy was mailed to Respondent at the Wentworth address.
11. On October 17, 2016, Diaz called the Department investigator to say he reviewed the subpoena and would respond in writing. Respondent was given two additional weeks to respond.
12. On November 14, 2016, the Department issued a Licensing Order against Diaz Construction & Remodeling Inc. for failure to respond with a subpoena issued by the Commissioner.
13. On November 22, 2016, Respondent appeared in person at the Department and provided a copy of its 2015 business tax filing reporting gross income of over \$830,000. Respondent reported no employees and provided some documents listing contractors that it worked for in 2015, and subcontractors that it hired. All subcontractors hired in 2015 were also hired in 2016 with the exception of one subcontractor. Respondent did not produce any contracts, bids, or invoices of the subcontractors it hired.

14. The business records of a contractor that hired Respondent included invoices submitted by Respondent for work performed. The invoices detailed the crew, by individual's first name that performed the work on a specific projects. There is no evidence that subcontractors are submitting invoices to Respondent for the work they perform.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723 (2016) and 326B.082, subd. 11 (b)(1) (2016).
2. Respondents failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 2 (2016).

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.

\$2,000 of the penalty was assessed for Respondent's hiring of unregistered subcontractors and was forgiven pursuant to Minn. Stat. § 326B.701, subd. 6(b) (2014). The portion of the penalty that was not forgiven was assessed for Respondent's delay in responding to an administrative subpoena and not providing complete records.

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).

Respondent is prohibited from applying for reinstatement of its contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

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).

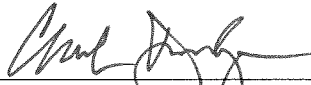
The monetary penalty assessed against the Respondent by this Licensing Order other than the forgiven portion is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2016). When this Licensing Order becomes final, the Commissioner may file and enforce 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: _____

1/12/17

KEN B. PETERSON
Commissioner

BY:



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