

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of Dennis R. Berg

**ADMINISTRATIVE ORDER  
WITH PENALTY**

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**I. ORDER**

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Dennis R. Berg (“Respondent”).

Pursuant to Minn. Stat. § 326B.082, subd. 7 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby assesses against Respondent a monetary penalty of \$7,000, of which \$2,000 shall be forgiven if Respondent demonstrates to the Commissioner by the 31<sup>st</sup> day after the issuance of this Administrative Order his full compliance with the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016).

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 to cease and desist from performing public or private sector commercial or residential building construction or improvement services in the state of Minnesota as defined in Minn. Stat. § 181.723, subds. 1 and 2 until such time as the Respondent (1) fully responds to the Commissioner’s June 28, 2017 Subpoena Duces Tecum; (2) registers with or secures licensure from the Minnesota Department of Labor and Industry (“Department”), as required by law; (3) pays the monetary penalty assessed above, and (4) otherwise complies with Minnesota statutes referenced below in the “Conclusions of Law” paragraph below.

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

**II. FINDINGS OF FACT**

1. Since September 15, 2012, Minnesota law has required all contractors who provide or offer to provide commercial or residential building construction or improvement services in Minnesota to be registered in the Department’s Construction Contractor Registration Program (“Registration Program”) if they are not required by the Department to hold a license.
1. Respondent is engaged in the business of providing commercial or residential building construction or improvement services but is neither licensed by the Commissioner nor registered in the Registration Program.

2. On June 26, 2017, the Department opened an investigation of Respondent based on information indicating that Respondent may have engaged in violations of the Minnesota statutes governing the classification of workers in the construction industry.
3. On June 28, 2017, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at 350 Johnson Ave. SE, Lot E12, Pine City, Minnesota, the same address used on a 2016 U.S. Internal Revenue Service form 1099-MISC issued to Respondent by Whittcon LLC. This address is also listed on Respondent's most recent Minnesota driver's license.
4. The first-class mailing was not returned to the Commissioner by the U.S. Postal Service ("USPS"). On July 6, 2017, the certified mailing return receipt was sent to the Commissioner by the USPS with the signature of a "Cheryl Palmer" as the person who accepted service. The address was corrected by recipient as follows: 350 Johnson Ave. SE, Lot G12, Pine City, MN.
5. As of the date of this Administrative Order, Respondent has not contacted the Department or responded to the Commissioner's June 28, 2017 subpoena duce tecum.

### **III. CONCLUSIONS OF LAW**

1. Respondent committed violations of applicable law. Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondent committed a violation of Minn. Stat. § 326B.082, subd. 2(b) (2016) by failing to respond to a written request for production of documents from the Commissioner.
3. Respondent committed a violation of Minn. Stat. §§ 181.723, subd 2 and 326B.701, subd. 2 (2016) by providing building construction or improvement services in Minnesota without being licensed by the Commissioner or registered in the Registration Program.

### **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. 8 (2016), Respondent shall have 30 days after issuance of this Administrative Order to request a hearing. In addition, if the Commissioner determines that Respondent has not corrected or taken appropriate steps toward correcting the violations within the 31-day period for corrective action, Respondent has the right to a review of the Commissioner's determination by requesting a hearing within 20 days after the Commissioner issues notice of this determination. 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 or notice. 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, subds. 4 and 8 (2016).

If the 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 (2015), and Minn. Stat. § 326B.082, subd. 8 (2016). These materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, and are also available at [www.revisor.mn.gov](http://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 (2016).

The penalty imposed upon Respondent by this Administrative Order, other than the forgivable portion, is due and payable ten days after the date the Administrative Order becomes final. If the Commissioner determines that the violations were not corrected within the 31-day period for corrective action, then the forgivable portion of the penalty is due and payable 20 days after the Commissioner serves notice of this determination or on the date this Administrative Order becomes final, whichever is later. *See* Minn. Stat. § 326B.083, subd. 3 (2016).

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 (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 Administrative 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: 8/16/17

KEN B. PETERSON  
Commissioner

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