

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Benjamin Peter Bernatsky,
individually and dba Benelle Construction

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Benjamin Peter Bernatsky, individually and dba Benelle Construction (“Respondent”).

Pursuant to the terms of its February 15, 2015 Consent Cease and Desist Order with the Commissioner, the **STAY** of penalty included in that Order is hereby **LIFTED** and the \$3,000 monetary penalty agreed to therein is due and payable in full.

Pursuant to Minn. Stat. §§ 326B.082, subd. 11(b)(6) (2016) and 326B.083 (2016), the Commissioner hereby assesses against Respondent an additional monetary penalty of \$5,000.

Pursuant to Minn. Stat. §§ 181.723, subd. 7 and 8a; 326B.701, subd. 2(a) and (b); 326B.701, subd. 5(b)(1) and 326B.083 (2016), the Commissioner hereby assesses against Respondent a monetary penalty of \$2,000 which shall be forgiven if Respondent demonstrates to the Commissioner by the 31st day after this Administrative Order is issued that Respondent has corrected the violations cited in the “Conclusions of Law” section below.

The Commissioner also hereby orders Respondent to cease and desist from violating the laws cited in the “Conclusions of Law” section below. Specifically, the Commissioner orders Respondent to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Department’s Construction Contractor Registration Program (“Registration Program”) is required under until compliance with Minn. Stat. §§ 181.723, subd. 7 and 8a; 326B.701, subd. 2(a) and (b); and 326B.701, subd. 5(b)(1) is achieved.

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

II. FINDINGS OF FACT

1. Respondent was formerly licensed by the Minnesota Department of Labor and Industry (“Department”) as a Residential Building Contractor, No. BC350543, which was issued on September 27, 2002 and expired on March 31, 2009.
2. When Respondent applied for Department licensure, he provided a business address of 7305 Dressage Road, Brainerd, MN.
3. Respondent is not registered in the Registration Program.

4. On February 15, 2015, Respondent entered into a Consent Cease and Desist Order with the Department the terms of which include a \$3,000 monetary penalty which was stayed on the condition that Respondent “engages in no future violation of this Consent Cease and Desist Order or any other Order of the Commissioner or any law or rule over which the Commissioner has authority.” A violation mandates that “the stay shall be lifted and the entire civil penalty shall be come due and payable” to the Commissioner. This action was taken based on evidence that Respondent had acted or held himself out as a residential building contractor without a valid license.
5. Respondent’s assumed name registration with the Minnesota Secretary of State is inactive as of the date of this Administrative Order and was limited to use of the assumed name “Benelle Construction” with Ben Bernatsky as the Nameholder at 7305 Dressage Drive, Brainerd, MN.
6. On January 30, 2017, the Department opened an investigation of Respondent based on information that indicated that Respondent may have engaged in violations of the statutes and rules governing workers in the construction industry.
7. In the course of its investigation, the Department learned that in 2014, 2015 and 2016, Respondent performed residential building construction and improvement services, for which registration in the Registration Program is required, as a subcontractor for Dean Radtke Remodeling & Construction.
8. On March 15, 2017, a Department investigator sent Respondent a subpoena duces tecum requiring the production of records and other information relating to Respondent’s contractors, subcontractors and employees. The subpoena required a response within 20 days and was mailed via first-class and certified mail.
9. On April 5, 2017, the certified mail was returned as it was “unclaimed” and the USPS was “unable to forward.” The first-class mail was not returned to the Department.
10. As of the date of this Administrative Order, Respondent has failed to respond.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. *See* Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondent performed residential building or improvement services without being licensed by the Department or registered in the Registration Program in violation of Minn. Stat. §§ 181.723, subd. 7 and 8a; 326B.701, subd. 2(a) and (b), subd. 5(b)(1) (2016).
3. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11(b)(6) (2016).
4. Respondent violated the Commissioner’s February 15, 2015 Consent Cease and Desist Order. Minn. Stat. § 326B.082, subd. 11(b)(5) (2016).

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. Because Respondents has a history of past violations, the Commissioner also considered: the similarity of the previous violations to the current violations; the time elapsed since the last violation; the number of previous violations; and the Respondent's response to the most recent previous violation.

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. 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.

VII. 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: 8/8/17

KEN B. PETERSON
Commissioner

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