

mn DEPARTMENT OF
LABOR AND INDUSTRY

August 1, 2017

Randy T. Graham
Graham Painting & Carpet Cleaning, Inc. Co
1839 Perennial Lane NE
Sauk Rapids, MN 56387

and

P.O. Box 337
Sartell, MN 56377

**RE: Licensing Order with Penalty
Our Investigation File No. REG1609-00007/TWI**

Mr. Graham:

The Department of Labor and Industry has concluded its investigation of the above-captioned matter. The purpose of this letter is to inform you of the result of our investigation and the disciplinary action that we have determined is appropriate in light of the violations we have discovered.

Enclosed is a Licensing Order by which a monetary penalty of \$7,000 has been assessed against you and your firm, and your contractor registration has been suspended, based on our determination that you have repeatedly failed to respond to the Commissioner's subpoenas duces tecum and have failed to pay the \$5,000 penalty assessed against you in the Administrative Order we issued in 2011.

As provided by Minnesota law and stated in the attached Order, you have the right to appeal this Order by requesting a hearing. A request for hearing must be made in writing as explained in the Order. Please note that, if an administrative law judge finds that a hearing request was frivolous or made solely for the purposes of delay, the Department may add to the amount of the penalty the costs charged to the agency by the Office of Administrative Hearings for the hearing.

If you have questions relating to this matter, please contact me directly.

Sincerely,



Tammy Wilde
Senior Investigator
Construction Codes and Licensing Division
Tel: (651) 284-5106
E-mail: tammy.wilde@state.mn.us

Equal Opportunity Employer

REG1609-00007/TWI

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Graham Painting & Carpet Cleaning, Inc., dba
Graham Painting, and Randy T. Graham, individually

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Graham Painting & Carpet Cleaning, Inc., dba Graham Painting, and Randy T. Graham, individually (“Respondents”).

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2016), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$7,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby suspends the Contractor Registration of Respondent Graham Painting & Carpet Cleaning, Inc., No. IR706850, until such time that Respondents:

- (1) provide a complete response to the Commissioner’s September 27, 2016 Subpoena Duces Tecum;
- (2) pay the monetary penalty imposed herein; and
- (3) pay the outstanding \$5,000 judgment against Respondents in Ramsey and Benton Counties arising from *Administrative Order Pursuant to Minn. Stat. § 181.723* issued by the Commissioner on June 7, 2011 (“Administrative Order”).

Pursuant to Minn. Stat. § 326B.082, subd. 12(b) (2016), the Commissioner also hereby orders Respondents, during the period of contractor registration suspension, to cease and desist from performing any public or private sector commercial or residential building construction or improvement services for which registration in the Minnesota Department of Labor and Industry’s (“Department”) 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 Respondents to cease and desist from registering in the Registration Program under the business name Graham Painting & Carpet Cleaning, 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. Respondents are engaged in the business of performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required. Respondents currently advertise painting, cabinet finishing, drywall and remodeling services on their website at <http://grahampaintingmn.com>.
2. Respondent Graham Painting & Carpet Cleaning, Inc., dba Graham Painting, ("GP") registered with the Registration Program on April 19, 2016 and was assigned registration No. IR706850. In its registration, GP disclosed that its sole owner is Respondent Randy T. Graham and its business address is P.O. Box 337, Sartell, MN.
3. According to the records of the Minnesota Secretary of State, GP was filed as a corporation on December 12, 2012 with Registered Offices at 1839 Perennial Lane NE, Sauk Rapids, MN, which is also the address currently listed on Respondent Graham's Minnesota driver's license No. N664137839016, which is valid as of the date of this Order. The corporation was administratively dissolved on April 16, 2014.
4. In February 2011, the Department commenced an investigation of Respondents based on information that indicated that Respondents may have engaged in the Minnesota statutes and rules governing the classification of workers in the construction industry.
5. As a result of this investigation, the Commissioner issued an Administrative Order against Respondents for failing to respond to a subpoena duces tecum. The Administrative Order imposed a monetary penalty of \$5,000 on Respondents, jointly and severally, which penalty was reduced to a judgment in Ramsey and Benton Counties in the State of Minnesota. As of the date of this Order, this \$5,000 judgment remains outstanding in both counties.
6. On September 1, 2016, the Department opened an investigation on Respondents based on reliable information that indicated that Respondents may have engaged in violations of the laws governing the classification of workers in the construction industry.
7. On September 27, 2016, a Department investigator sent Respondents a Subpoena Duces Tecum requiring the production of records and other information relating to Respondents' contractors, subcontractors and employees. This subpoena required a response within 20 days and was mailed via first-class and certified mail to Respondents at 1839 Perennial Lane NE, Sauk Rapids, MN.
8. On September 29, 2016, the certified mail was returned as it was "unclaimed" and the United States Postal Service was "unable to forward." This first-class mail was not returned to the Department.
9. On February 7, 2017, a Department investigator sent Respondents a letter at 1839 Perennial Lane NE, Sauk Rapids, MN via first-class mail to follow up on the September 27, 2016 subpoena. This letter was not returned to the Department.

10. On April 28, 2017, a Department investigator sent Respondents a letter at P.O. Box 337, Sartell, MN via first-class mail to follow up on the subpoena and the February 7, 2017 letter. This letter was not returned to the Department.
11. As of the date of this Order, Respondents have not responded to the Subpoena Duces Tecum or either of the Department's subsequent letters.

III. CONCLUSIONS OF LAW

1. Respondents committed a violation of applicable law. Minn. Stat. §§ 181.723, subd. 4(a) and subd. 7(c); and 326B.082, subd. 11(b)(1) (2016).
2. Respondents failed to comply with a subpoena issued by the Commissioner within 30 days of the Commissioner's service of request in violation of Minn. Stat. § 326B.082, subd. 11(b)(6) (2016).
3. By failing to pay the monetary penalty assessed in the Commissioner's *Administrative Order Pursuant to Minn. Stat. § 181.723* dated June 7, 2011, Respondents have an unresolved monetary penalty related to the activity for which they hold a contractor registration. Minn. Stat. § 326B.082, subd. 11(a) (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 Respondents gained economic benefit in not complying with the law; and other factors as justice may require. Because Respondents have a history of past violations, the Commissioner also considered: the similarity of the previous violation to the current violations; the time elapsed since the last violation; the number of previous violations; and the Respondents' response to the most recent previous violation.

V. REQUEST FOR HEARING

Pursuant to Minn. Stat. § 326B.082, subd. 12(c) (2016), Respondents 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subds. 4 and 12(c) (2016).

If Respondents submit 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 Respondents do not request a hearing or Respondents' 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).

Respondents are prohibited from applying for reinstatement of their Contractor Registration until such time full compliance with the terms of this Licensing Order has been achieved.

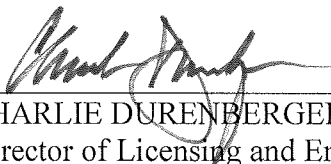
The monetary penalty assessed against the Respondents by this Licensing Order is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2016). When this Licensing Order becomes final, the Commissioner may file and enforce any unpaid portion of the penalty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

8/1/17

KEN B. PETERSON
Commissioner

BY:


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