

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of 2 Star Drywall, Inc.
and Humberto Torres, individually.

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against 2 Star Drywall, Inc. and Humberto Torres, individually. (“Respondents”).

Pursuant to Minn. Stat. §§ 181.723, subd. 4 (2014), §§ 326B.082 through 326B.085 and 326B.701 (2014); the Commissioner hereby assesses against Respondent a monetary penalty of \$1,000.

The Licensing Order and Administrative Order issued against the Respondents on August 10, 2016 are hereby **VACATED**.

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

II. FINDINGS OF FACT

1. Respondent 2 Star Drywall, Inc. (2SDI”) registered in the Construction Contractor Registration Program on August 29, 2012 and was assigned registration No. IR652824. In its registration, 2SDI indicated that it is owned by just one individual, Humberto Torres, and that its business address is: 8211 18th Ave. S., Bloomington, MN 55425.
2. Respondents, as a registered contractor, must adhere to the Minnesota statutes and regulations governing contractor registration and worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2014) and Minn. R. Chapter 5224 (2015).
3. On May 26, 2015, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondents based on information that indicated Respondents may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
4. On January 19, 2016, a Department investigator mailed a subpoena duces tecum to Respondents.
5. Based on a review of Respondents’ answer to the subpoena, the Department determined the following:
 - On October 26, 2015 2SDI renewed its registration and again stated that Humberto Torres was the sole owner of 2SDI.

- In its filing with the Minnesota Secretary of State, Humberto Torres is listed as the sole owner of 2SDI.
- Since 2009, Respondents have reported to their workers' compensation insurance carrier that 2SDI had the following owners: Humberto Torres (50% owner), Jorge Alatoma Mostezuma (25% owner) and Emilio Alatoma Moctezuma (25% owner).
- Respondents paid Jorge Alatoma Mostezuma and Emilio by check and issued them an IRS form 1099 for 2014. Neither individual was registered or licensed by the Department at the time they performed building construction services on Respondents' behalf.

III. CONCLUSIONS OF LAW

1. An individual or business entity that engages in building construction or improvement services must adhere to the Minnesota statutes and rules governing independent contractors, Minn. Stat. §§ 181.723 and 326B.701 (2014).
2. Respondents committed violations of applicable law. Minn. Stat. §§ 181.723 and 326B.701 (2014).
3. Respondents hired persons who 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) (2014).
4. Respondents misclassified employees. Minn. Stat. § 181.723, subd. 7(a)(1)(3) and 7(b)(3) (2014).
5. Respondents provided false information to the Commissioner in violation of Minn. Stat. §326B.082, subd. 11(b)(2) (2014).

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.

V. REQUEST FOR HEARING

Pursuant to Minn. Stat. § 326B.082, subd. 12(c) (2014), 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, subds. 4 and 12(c) (2014).

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) (2014). 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) (2014).

The monetary penalty assessed against the Respondent by this Licensing Order is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2014). 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 (2014) and 326B.083, subd. 2 (2014). 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 (2014). Also, pursuant to Minn. Stat. § 16D.13 (2014), 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 (2014) will begin to accrue on the unpaid portion of the penalty.

Dated: 9/22/16

KEN B. PETERSON
Commissioner

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