

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of R&C Builders LIMITED LIABILITY
COMPANY and Christopher H. Foster, Individually

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against R&C Builders LIMITED LIABILITY COMPANY, and Christopher H. Foster, individually (“Respondents”).

Pursuant to Minn. Stat. § 326B.082, subd. 7 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$7,000, \$2,000 of which shall be forgiven if Respondents demonstrate to the Commissioner by the 31st day after this Administrative Order their full compliance with: (1) the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016) or (2) Residential Building Contractor or Residential Remodeler licensing requirements of Minn. Stat. § 326B.805, subd. 1 (2016), as applicable.

The Commissioner also hereby orders Respondents to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders R&C Builders LIMITED LIABILITY COMPANY and Christopher H. Foster, individually and doing business under any other business name, 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, subs. 1 and 2 (2016) until such time as the Respondent fully responds to the Commissioner’s July 10, 2017 Subpoena Duces Tecum and demonstrates its full compliance with the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016).

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 providing commercial or residential building construction or improvement services but they are neither licensed by the Minnesota Department of Labor and Industry (“Department”) nor registered in the Minnesota Construction Contractor Registration Program (“Registration Program”) administered by the Commissioner.

2. Respondent R&C Builders LIMITED LIABILITY COMPANY has never been registered in the Registration Program.
3. On May 2, 2016, Respondent Christopher H. Foster registered the limited liability company R&C Builders LIMITED LIABILITY COMPANY with the Minnesota Secretary of State with File No. 886578000029. In this filing, Respondents listed their registered offices at 559 – 131st Avenue N., Champlin, Minnesota. This business filing is active and in good standing as of the date of this Order.
4. On April 17, 2017, the Department opened an investigation of Respondents based on information indicating that Respondents may have engaged in violations of the Minnesota statutes governing the classification of workers in the construction industry.
5. On July 10, 2017, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondents at 559 – 131st Avenue N., Champlin, Minnesota. This is the registered office address included in the Minnesota Secretary of State filing.
6. The first-class mailing was not returned to the Commissioner by the U.S. Postal Service (“USPS”). On July 12, 2017, the Commissioner received the certified mailing return receipt card from the USPS with Howard Foster’s signature. He identified himself as the “addressee” on the card.
7. As of the date of this Administrative Order, Respondents have not contacted the Department or responded to the Commissioner’s July 10, 2017 subpoena duces tecum.
8. On April 12, 2017, a Department investigator received an email from an insurance agent who informed the Commissioner’s investigator that Respondent Foster altered expired certificates of insurance from his old business and was using them to assert insurance coverage for Respondent R&C Builders LIMITED LIABILITY COMPANY.
9. Respondents’ use of expired, altered certificates of insurance was confirmed by Lori at Jonathan Homes of MN, LLC (BC633111), one of the general contractors for which Respondents performed services in 2017.

III. CONCLUSIONS OF LAW

1. Respondents committed violations of applicable law. Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondents 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. Respondents committed a violation of Minn. Stat. §§ 181.723, subd 2 and 326B.701, subd. 2 (2016) by offering to provide building construction or improvement services

in Minnesota without being registered in the Registration Program, or licensed by the Commissioner under Minn. Stat. §§ 326B.801, subd. 12 and 326B.805, subd. 1 (2016), as applicable.

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 Respondents 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), Respondents shall have 30 days after issuance of this Administrative Order to request a hearing. In addition, if the Commissioner determines that Respondents have not achieved compliance with the Contractor Registration or residential building contractor or residential remodeler licensing requirements cited above within the 31-day period for corrective action, Respondents have 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 8 (2016).

If the Respondents submit 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.

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 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 monetary penalty imposed upon Respondents 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 Respondents have failed to comply with the Contractor Registration or licensing provisions cited above, 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), Respondents are 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: 9/14/17

KEN B. PETERSON
Commissioner


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