

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of Tony Lamotte Construction, LLC  
and Tony Lamotte, Individually

**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 Tony Lamotte Construction, LLC, and Tony Lamotte, 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 \$4,000, \$2,000 of which shall be forgiven if Respondents demonstrate to the Commissioner by the 31<sup>st</sup> 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 Tony Lamotte Construction, LLC and Tony Lamotte, 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, subds. 1 and 2 (2016) until such time as Respondents fully respond to the Commissioner’s June 14, 2017 Subpoena Duces Tecum and demonstrate their full compliance with the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016) or the Residential Building Contractor or Residential Remodeler licensing requirements of Minn. Stat. § 326B.805, subd. 1 (2016), as applicable.

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. Respondents have never been registered in the Registration Program or licensed by the Department.
3. On April 29, 2014, Respondent Tony Lamotte registered the limited liability company Tony Lamotte Construction, LLC with the Minnesota Secretary of State with File No. 758238400021. In this filing, Respondents listed their registered and principal executive offices at 13 Airport Road, Dodge Center, Minnesota. This business filing is active and in good standing as of the date of this Order.
4. On May 4, 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 June 14, 2017, a Department investigator mailed a Subpoena Duces Tecum via first-class and certified mail to Respondents at their registered and principal executive offices.
6. On June 19, Respondent Tony Lamotte telephoned the Department investigator and said he would respond to the subpoena and register his company in the Registration Program.
7. On that same date, the Department investigator sent Respondent Tony Lamotte an email communication addressed to [tony.lamotte.construction@gmail.com](mailto:tony.lamotte.construction@gmail.com) providing links to the Department's online Registration Program applications.
8. On July 6, 2017, Respondents sent a partial response to the subpoena but failed to provide federal business tax returns for 2014 through 2016, as requested by the Department investigator.
9. In their subpoena response, Respondents stated that they perform residential interior and exterior painting services in Minnesota.
10. On August 9, 2017, Commissioner's representative sent a follow up letter to Respondents requiring Respondents to provide their federal business tax returns and register in the Registration Program.
11. As of the date of this Administrative Order, Respondents have not contacted the Department or provided their federal business tax returns.
12. As of the date of this Administrative Order, Respondents are not registered with or licensed by the Department.

### 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 fully 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](http://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: 10/2/17

KEN B. PETERSON  
Commissioner

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