

m DEPARTMENT OF
LABOR AND INDUSTRY

December 5, 2017

Douglas E. Maroto Sanchez
Marbo Construction LLC
8257 Norwood Lane N
Maple Grove, MN 55369

RE: Administrative Order; REG1707-00021/JOR

Dear Mr. Maroto,

I am writing to inform you of the conclusion of the investigation in the above-referenced matter. Please review the enclosed Administrative Order With Penalty.

The Commissioner has assessed a \$10,000 penalty against Marbo Construction LLC (“Respondent”) for contractor registration and misclassification violations. \$8,000 of the penalty can and will be forgiven if Respondent demonstrates to the Commissioner in writing within 31 days from this order that the violations in the order have been corrected or the measures Respondent will take toward correcting the violations.

Respondent is prohibited from performing building construction or improvement services until Respondent complies with the Administrative Order.

If you have any questions about the order, please contact me.

Sincerely,



Jonathan Reiner
Senior Investigator
Construction Codes & Licensing – Enforcement
443 Lafayette Road N
St. Paul, MN 55155
P: (651) 284-5396
F: (651) 284-5746
jonathan.reiner@state.mn.us

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Marbo Construction LLC

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Marbo Construction LLC (“Respondent”). Pursuant to Minn. Stat. § 326B.082, subd. 7 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby assesses against Respondent, a monetary penalty of \$10,000, of which \$8,000 is forgivable. The forgivable portion of this penalty 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 or has developed a correction plan acceptable to the Commissioner. The required corrective action is described in the “Corrective Action” section of this Administrative Order.

The Commissioner also hereby orders Respondent to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondent to cease and desist from performing building construction or improvement services until Respondent achieves licensure or registration with the Commissioner as applicable, and Respondent ceases misclassifying employees as independent contractors.

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

II. FINDINGS OF FACT

1. Respondent’s business addresses include 11710 52nd Avenue North, Plymouth, MN 55442; 8257 Norwood Lane North, Maple Grove, MN 55369; and 2241 Legend Drive, Golden Valley, MN 55422. Marbo Construction LLC is a registered limited liability company with the Minnesota Secretary of State. Marbo Construction LLC has never been registered or licensed by the Minnesota Department of Labor and Industry (“Department”).
2. Douglas Esteban Maroto Sanchez is an owner of Marbo Construction LLC. Mr. Maroto was once the qualified builder, No. QB141968, for the formerly licensed contractor Best Way Home Experts Inc., No. BC634795. Mr. Maroto also owns and operates Borma Construction LLC, which also has never been registered or licensed by the Department.

3. As a result of an investigation of Respondent opened in July of 2017, the Department determined that from January 1, 2016 through July 14, 2017 (“audit period”), Respondent hired at least thirty individuals or business entities to perform building construction or improvement services for Respondent. The business entities or individuals Respondent hired during the audit period are as follows: Air Express Inc.; Air Rite Mechanical Systems Inc.; American Eagle Plumbing Inc.; Arias Cleaning Services LLC; B and B Plumbing Inc.; Benito Juarez; C&A Solution Carpet Cleaning LLC; Daniel Espinoza; Daniel Laguna; Edwin David Rodriguez; Elvin W. Rodriguez; Elvis Remodeling; Francisco Granda; Gaonas Remodeling LLC; Giovanni’s Painting LLC; HF Construction Services LLC; JC Mata; Jesus Justo Guzman; Joaquin Alvarez; Luis Granda; Melvin Joel Salgado; Osiel Gaona; Rike Lee Electric Inc.; Roberto Jacobo LLC; Ted Lee; Teodora Portillo; Tinoco’s Drywall LLC; Tomas Roofing; Torres Carpet Cleaning LLC; Yobany Armando Castro Romero.
4. Respondent paid the following individuals or business entities for the performance of building construction or improvement services even though they were not licensed or registered at the time they performed construction services for Respondent: Benito Juarez; Daniel Espinoza; Edwin David Rodriguez; Elvin W. Rodriguez; Francisco Granda; Gaonas Remodeling LLC; Giovanni’s Painting LLC; HF Construction Services LLC; JC Mata; Joaquin Alvarez; Luis Granda; Melvin Joel Salgado; Ted Lee; Teodora Portillo; Tomas Roofing; Torres Carpet Cleaning LLC; Yobany Armando Castro Romero.
5. Respondent produced to the Department contracts for building construction or improvement services between itself and Gaona’s Remodeling LLC, Geovanni’s Painting LLC, Joaquin Alvarez, and Roberto Jacobo Villagomez. Respondent did not produce any contracts or describe any applicable contractual terms for other individuals and entities who performed services for Respondent.
6. Respondent treated individuals who provided building construction or improvement services for Respondent as employees by providing them with construction materials, directing them on specific tasks such as painting and drywall practices, setting mandatory hours of work, and by employing individuals who did not have their own separate businesses with their own office, equipment, materials, or other facilities.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondent was neither licensed nor registered while performing construction services for another person. Minn. Stat. § 326B.701, subd. 5(b)(1) (2016).

3. Respondent paid seventeen unlicensed and unregistered individuals and business entities to perform construction services. Minn. Stat. § 326B.701, subd. 5(b)(2) (2016).
4. The above unlicensed and unregistered individuals and business entity owners who performed services for Respondent are presumed to be Respondent's employees. Minn. Stat. §§ 181.723, subs. 4(a), 4(b) (2016). Not all of the individuals met all nine factors required for independent contractor status. Minn. Stat. § 181.723, subd. 4(a) (2016). Specifically, they do not all have their own separate businesses, they did not all operate under contract with Respondent or control the means of performing their services, they did not all incur the main expenses related to their services for Respondent, and they did not all have continuing or recurring business liabilities. Minn. Stat. §§ 181.723, subs. 4(a)(1), 4(a)(3), 4(a)(4), 4(a)(8) (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 Respondents gained economic benefit in not complying with the law; and other factors as justice may require.

V. CORRECTIVE ACTION

Within 31 days of issuance of this Administrative Order, Respondent must demonstrate, IN WRITING, to the satisfaction of the Commissioner that the violations specified above have been corrected as specified below or that appropriate steps toward correcting the violations have been taken.

Failure to demonstrate to the satisfaction of the Commissioner that the violations have been corrected or that appropriate steps have been taken toward correcting the violations, within the 31-day period, shall be cause for subsequent enforcement action, and the forgivable portion of the penalty assessed in this Administrative Order will become due and payable as described in the "Effect of Final Order" section below. A plan to correct the violations may be submitted to the Commissioner during the 31-day period for corrective action.

If the Commissioner determines that the violations were corrected within the 31-day period for corrective action, or that a written correction plan acceptable to the Commissioner has been submitted within the 31-day period, the Commissioner shall forgive the forgivable portion of the penalty. If the Commissioner determines that the violations were not corrected within the 31-day period and a written correction plan acceptable to the Commissioner was not developed within the 31-day period, the Commissioner shall serve notice of this determination. Failure to fully comply with the approved plan shall also be cause for subsequent enforcement action by the Commissioner.

The following corrective actions are required by this Administrative Order:

1. Respondent must obtain a license or contractor registration as applicable in full accordance with the requirements of Minn. Stat. § 326B.801, et seq. (2016) or Minn. Stat. § 326B.701 (2016).
2. Respondent must require its subcontractors to obtain a license or contractor registration as applicable before performing any building construction or improvement services for Respondent in full accordance with the requirements of Minn. Stat. § 326B.701 (2016).
3. Respondent must either classify the above unlicensed and unregistered individuals and business entity owners as employees for all regulatory purposes or treat them as independent contractors in compliance with Minn. Stat. 181.723 (2016).

VI. 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. In addition, if the Commissioner determines that Respondent has not corrected or taken appropriate steps toward correcting the violations within the 31-day period for corrective action, Respondent has 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. 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).

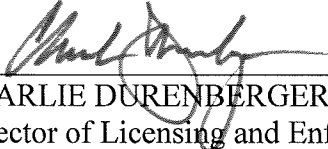
The penalty imposed upon Respondent by this Administrative Order, other than the forgivable portion, is due and payable ten days after the date the Administrative Order becomes final. If the Commissioner determines that the violations were not corrected within the 31-day period for corrective action and a correction plan acceptable to the Commissioner was not developed within the 31-day period, 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.

Furthermore, upon application of the Commissioner, a district court shall find as a contempt of court any failure of Respondent to correct the violations as required by this Administrative Order. *See* Minn. Stat. § 326B.082, subd. 7(c) (2016). Failure to take the required corrective action may also result in additional enforcement action under Minn. Stat. § 326B.082 (2016).

Dated: 12/5/17

KEN B. PETERSON
Commissioner

BY: 

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

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
443 LAFAYETTE ROAD NORTH
ST PAUL, MINNESOTA 55155

AFFIDAVIT OF SERVICE BY U.S. MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

My name is Jonathan Reiner and I am employed by the Minnesota Department of Labor and Industry, Construction Codes and Licensing Division, as a Senior Investigator. On the 5th day of December, 2017, in the City of St. Paul, County of Ramsey, State of Minnesota, I served the attached Administrative Order by first-class mail by depositing the same in the United States Mail, a true and correct copy thereof, properly enveloped, with postage prepaid, and addressed to:

REGULAR FIRST-CLASS MAIL

Douglas E. Maroto Sanchez
Marbo Construction LLC
8257 Norwood Lane N
Maple Grove, MN 55369

I am signing this Affidavit in Ramsey County, State of Minnesota, on the 5th day of December, 2017. Pursuant to Minnesota Statutes § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.



Jonathan Reiner