

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
Xtreme Wall Systems, LLC, and Laura Lebaron,
individually

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Xtreme Wall Systems, LLC and Laura Lebaron, 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 \$1,000.

Pursuant to Minn. Stat. § 326B.082, subs. 11(b) and 12 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby revokes Respondents’ Contractor Registration, No. IR715138.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), the Commissioner also hereby orders Respondents to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Minnesota 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 Xtreme Wall Systems, LLC 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.
2. Respondent Laura Lebaron is the sole principal and chief manager of Xtreme Wall Systems, LLC (“XWS”), which was filed as a limited liability company with the Minnesota Secretary of State on September 29, 2016. In that filing, Lebaron was listed as

the company's manager and its registered office address and principal executive office address were listed as 17041 Georgetown Way, Rosemount, Minnesota.

3. XWS first registered with the Minnesota Department of Labor and Industry ("Department") through the Registration Program on October 11, 2016 and was assigned registration No. IR715138. When Respondents created this registration, they provided a business address of 17041 Georgetown Way, Rosemount, Minnesota. Respondents listed their email address as lebgabriel@yahoo.com and their phone number as (208) 419-6096.
4. On January 9, 2017, the Department opened an investigation of Respondents based on information that suggested that Respondents had engaged in violations of the laws and rules governing the classification of workers in the construction industry.
5. The same day, a Department investigator sent Respondents a subpoena duces tecum requiring the production of records and other information relating to Respondents' contractors, subcontractors and employees. The subpoena required a response within 20 days and was mailed via first-class and certified mail to the address Respondents provided in their registration.
6. On January 31, 2017, Gabriel Lebaron signed the certified mail return receipt acknowledging receipt of the subpoena.
7. Respondents provided a partial response to the subpoena. In the response, Lebaron stated that she had no employees or subcontractors as she and her husband, Gabriel Lebaron, do all the work themselves. An IRS Form 1099 issued by another contractor shows payment to XWS in the amount of \$127,206.00 for 2016.
8. On February 24, 2017, the Department investigator sent a letter to Respondents requesting copies of checks made payable to Gabriel Lebaron and either form W-2 or W-9 for him.
9. Respondents failed to respond to the letter.
10. Gabriel Lebaron was the sole principal of Mud Pro Drywall, LLC ("MPD"), which held two separate registrations in the Registration Program. No. IR659851 was issued December 3, 2012, at which time Gabriel Lebaron stated that his company's business address was 16962 Kenrick Ave., No. 27, Lakeville, MN. This registration expired December 31, 2015.
11. The second registration, No. IR698355, was issued on August 23, 2015. In this registration, Gabriel Lebaron provided a business address of 17041 Georgetown Way, Rosemount, MN, which is also the address that Respondents provided in their registration and is listed on the Minnesota driver's licenses of Gabriel and Laura Lebaron. Gabriel Lebaron also provided the same email address and phone number that were later submitted by Respondents in their registration.
12. On August 18, 2016, the Department issued a Licensing Order that suspended MPD's registrations until it provided a complete response to a subpoena issued by the

Commissioner on December 3, 2015 and paid a \$5,000 monetary penalty. As of the date of this Order, the August 2016 Licensing Order is final and MPD has not paid the \$5,000 monetary penalty or provided a response to the December 2015 subpoena.

13. On the same day the Licensing Order was issued, the Department also issued an Administrative Order to Gabriel Lebaron, ordering him to cease and desist from performing building construction or improvement services until Respondents provided a complete response to the December 2015 subpoena and he paid a \$1,000 monetary penalty. As of the date of this Order, the Administrative Order is final and Gabriel Lebaron has not paid the \$5,000 monetary penalty or provided a complete response to the December 2015 subpoena.
14. MPD had submitted copies of its 2013 and 2014 self-employment tax returns. On the IRS Form 1040, Gabriel Lebaron and Laura Lebaron are listed as married filing jointly.
15. Respondents do not have an Unemployment Insurance account and they claimed not to have employees. Respondents hired Gabriel Lebaron whose contractor registration is suspended. For Unemployment Insurance purposes, only the spouse of a sole proprietor is defined as a non-covered employment per Minn. Stat. § 268.035, subd. 20. Gabriel Lebaron is a misclassified statutory employee.

III. CONCLUSIONS OF LAW

1. Respondents committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2016).
2. Respondent failed to provide a complete response to the subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11(b)(6) (2016).
3. Respondent hired a person to provide construction services without a license or construction contractor registration and treated him as an independent contractor in violation of Minn. Stat. § 326B.701, subd. 5 (b)(2) (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. 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).

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), 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 (2016) will begin to accrue on the unpaid portion of the penalty.

Dated: 6/19/17

KEN B. PETERSON
Commissioner


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