

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of Avimael Herrera,  
dba AH Roofing Company

**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 Avimael Herrera, dba AH Roofing Company (“Respondent”).

Pursuant to Minn. Stat. § 326B.082, subd. 7 (2018) and Minn. Stat. § 326B.083 (2018), the Commissioner hereby assesses against Respondent a monetary penalty of \$7,000, of which \$2,000 shall be forgiven if Respondent demonstrates to the Commissioner by the 31<sup>st</sup> day after this Administrative Order his full compliance with: (1) the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2018) or (2) Residential Building Contractor or Residential Remodeler licensing requirements of Minn. Stat. § 326B.805, subd. 1 (2018), as applicable.

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 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, until such time as the Respondent complies with all the terms of this Administrative Order with Penalty and responds fully and truthfully to the Commissioner’s November 2, 2018 Subpoena Duces Tecum, and otherwise complies with the Minnesota statutes cited in the “Conclusions of Law” below.

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

**II. FINDINGS OF FACT**

1. Since September 15, 2012, Minn. Stat. §§ 181.723, subd. 4 (2018) and 326B.701, subd. 2 (2016) require all contractors who intend to provide commercial or residential building construction or improvement services in Minnesota to be registered with the Minnesota Department of Labor and Industry (“Department”)’s Construction Contractor Registration Program (“Registration Program”) if they are not required to hold a license issued by the Department.

2. The Department opened this investigation on October 4, 2018 based on documentation gathered in an investigation of another contractor, which evidenced Respondent's performance of building construction or improvement work in Minnesota without his ever having been registered in the Registration Program or licensed by the Department.
3. Respondent is not and has never been registered with the Texas Secretary of State or the Minnesota Secretary of State as of the date of this Administrative Order.
4. On November 2, 2018, a Department investigator sent Respondent a Subpoena Duces Tecum via first-class and certified mail to 5600 Chimney Road, Houston Texas, 77081, the address provided by Sela Roofing and Remodeling, Inc., Respondent's Minnesota contractor.
5. Both the first-class and certified mailings were returned to the Department by the US Postal Service ("USPS") marked "RETURN TO SENDER – VACANT – UNABLE TO FORWARD."
6. After researching Respondent on [www.familytreenow.com](http://www.familytreenow.com), a Department investigator located another address for him: 5909 Fondren Road, #305, Houston, TX 77036. The investigator sent the subpoena to this newly discovered address via first-class and certified mail on November 27, 2018.
7. Both the first-class and certified mailings were returned to the Department by the USPS. The first-class mailing was marked "RETURN TO SENDER – NOT DELIVERABLE AS ADDRESSED – UNABLE TO FORWARD." The certified mailing was marked "RETURN TO SENDER – UNCLAIMED."
8. Respondent has made no contact with the Department as of the date of this Administrative Order.

### **III. CONCLUSIONS OF LAW**

1. Respondent committed violation of applicable law. Minn. Stat. § 326B.082, subd. 7 (2018).
2. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11(b)(6) (2018).
3. Respondent performed building construction or improvement services and was treated as an independent contractor despite not being licensed by the Department or registered in the Registration Program in violation of Minn. Stat. § 326B.701, subd. 2 (2018).

#### **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. 8 (2018), Respondent shall have 30 days after issuance of this Administrative Order to request a hearing. In addition, 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subds. 4 and 8 (2018).

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 (2017), and Minn. Stat. § 326B.082, subd. 8 (2018). 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 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 (2018).

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 Respondent failed to register in the Registration Program or come into compliance with any Minnesota contractor licensing requirement by the 31<sup>st</sup> day after issuance of this Administrative Order, 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 (2018).

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 (2018). 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 (2018). Also, pursuant to Minn. Stat. § 16D.13 (2018), 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 (2018) will begin to accrue on the unpaid portion of the penalty.

Dated: 1/11/19

CHRISTOPHER LEIFELD  
Acting Commissioner

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