

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Whittcon l.l.c and
Ron K. Whittaker, Individually

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Whittcon l.l.c. and Ron K. Whittaker, 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 \$2,000 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 Whittcon l.l.c. and Ron K. Whittaker, 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 Respondents demonstrate full compliance with the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016) or Respondents obtain licensure with the Minnesota Department of Labor and Industry (“Department”).

The Commissioner also assesses against Respondents a monetary penalty of \$1,500 but this penalty is hereby forgiven pursuant to Minn. Stat. § 326B.701, subd. 6(b) (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 Commissioner

nor registered in the Minnesota Construction Contractor Registration Program (“Registration Program”) administered by the Commissioner.

2. Respondent Whittcon l.l.c. has never been registered in the Registration Program. Respondent Ron K. Whittaker has never been registered in the Registration Program, individually or as a business owner.
3. On January 24, 2016, Respondent Ron K. Whittaker registered the limited liability company Whittcon l.l.c. with the Minnesota Secretary of State with File No. 868816500021. In this filing, Respondents listed their registered offices at 745 West 4th Street, Rush City, Minnesota. This business filing is active and in good standing as of the date of this Order.
4. On December 21, 2016, 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. Based on information gathered in its investigation, the Department found evidence that in 2016, Respondents hired and paid Dennis Berg, Steven Johnston and Jamie Stearns, all unregistered individuals, to perform building construction or improvement services on Respondents’ behalf and treated them as independent contractors.
6. Jamie G. Stearns registered in the Registration Program on August 1, 2017 and was issued Registration No. IR728197.
7. As of the date of this Order, Dennis Berg and Steven Johnston have not registered with the Registration Program or obtained a license issued by the Commissioner.

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. §§ 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.
3. Respondent hired three individuals to provide construction services without a construction contractor registration or license issued by the Commissioner and treated them as independent contractors 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.

The penalty assessed against Respondents for hiring unregistered subcontractors is forgiven pursuant to Minn. Stat. § 326B.701, subd. 5(b) (2016) as the violations cited herein constitute Respondents' first such violation.

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).


If the Commissioner determines that Respondents have failed to comply with the Contractor Registration or licensing provisions cited above, then the forgivable penalty assessed for performing construction services without registration in the Registration Program or licensure with the Department 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: 9/13/17

KEN B. PETERSON
Commissioner

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