

m DEPARTMENT OF
LABOR AND INDUSTRY

February 7, 2018

SENT VIA E-MAIL & U.S. MAIL

Mr. Ricardo Batres
American Contractors and Associates LLC
5644 Vera Cruz Avenue N
Crystal, MN 55429

Re: Administrative Order with Penalty; REG1709-00012/JOR

Mr. Batres,

You have repeatedly failed to respond to the Minnesota Department of Labor and Industry's reasonable requests for documents. Enclosed, review the Administrative Order, which includes a \$10,000 penalty. You are still obligated to respond to the subpoena and requests for information, and if you do so adequately, \$9,000 of the penalty will be forgiven. Failure to respond will result in the full \$10,000 penalty becoming due and owing when the Order becomes final.

Please contact me with any questions.

Sincerely,



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

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of American Contractors
and Associates LLC

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against American Contractors and Associates 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 \$9,000 is forgivable. The forgivable portion of this penalty shall be forgiven if Respondent performs the corrective action described in the Corrective Action section of this Order by providing a complete response to the Commissioner’s September 25, 2017 subpoena and subsequent request for information.

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

II. FINDINGS OF FACT

1. Respondent holds a Residential Building Contractor license issued by the Commissioner on October 14, 2008, No. BC631907.
2. Respondent, as a licensed Residential Building Contractor, must adhere to the Minnesota statutes and regulations governing contractor registration and classification, Minn. Stat. §§ 181.723 and 326B.701 (2016).
3. On September 7, 2017, the Minnesota Department of Labor and Industry (“Department”) opened an investigation based on receipt of information that indicated that Respondent may have engaged in violations of the Minnesota statutes governing the classification of workers in the construction industry.
4. As a part of the Department’s investigation, the Commissioner issued a subpoena duces tecum to Respondent on September 25, 2017, with a response deadline of October 16, 2017.

5. On October 9, 2017, Respondent requested additional time to respond to the Commissioner's subpoena. A Department investigator agreed to extend the response deadline to October 23, 2017.
6. On October 24, 2017, Respondent requested additional time to respond to the Commissioner's subpoena. The Department investigator agreed to extend the deadline to October 31, 2017.
7. On November 6, 2017, Respondent requested additional time to respond to the Commissioner's subpoena. The Department investigator once again agreed to extend the deadline, this time to November 27, 2017. As requested by Respondent, the Department investigator sent a copy of the Commissioner's subpoena to Respondent's email address of americancontractorsmn@gmail.com.
8. On November 13, 2017, the Department investigator sent Respondent an email reminder to respond to the Commissioner's subpoena by November 27, 2017.
9. On November 20, 2017, the Department investigator sent Respondent an email reminder to respond to the Commissioner's subpoena by November 27, 2017.
10. On November 27, 2017, Respondent's principal, Ricardo Batres, appeared at the Department in person to respond to the subpoena, but he did not produce any documents whatsoever.
11. On November 30, 2017, Respondent produced a two-page Word document presumably listing the purported subcontractors that provided services to Respondent during an unstated time period. In its accompanying message, Respondent stated, "I'm working on the Contracts and Invoices form Cross Creek Construction, for balances that are still due, as well as copies of any other pertaining to payments etc to Martinez subs and any one involved that has received payments for this projects."
12. On December 6, 2017, the Department investigator notified Respondent about the deficiencies in Respondent's November 30, 2017 response, and the investigator required a full response from Respondent by December 15, 2017.
13. On December 15, 2017, Respondent produced a six-page pdf file that was mostly scanned pages of the original subpoena and another written list of Respondent's subcontractors and hiring contractors.
14. On January 25, 2018, a Department investigator requested a variety of payment information from Respondent pertaining to the Liberty Crossing Townhomes project, for which Respondent had a nearly half-a-million dollar contract for building construction or improvement services. The investigator requested a response by February 2, 2018.

15. On January 31, 2018, Respondent produced a single check from a Juan Ruiz Beltran to a Selum Orellana for \$1,200. The relevancy of the check was not clear on its face, nor did Respondent explain its relevancy.
16. As of the date of this Order, Respondent still has not produced all of the required information responsive to the September 25, 2017 subpoena and subsequent requests for information. Furthermore, as of the date of this Order, Respondent has not produced any information responsive to the January 25, 2018 request for information pursuant to the subpoena.

III. CONCLUSIONS OF LAW

1. Respondent has committed a violation of applicable law. Minn. Stat. § 326B.082, subd. 11(b)(1) (2016).
2. Respondent has failed to cooperate with the Commissioner's request to produce documents. Minn. Stat. § 326B.082, subd. 11(b)(6) (2016).

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. CORRECTIVE ACTION

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

Failure to demonstrate to the satisfaction of the Commissioner that the violation has been corrected or that appropriate steps have been taken toward correcting the violation, 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.

If the Commissioner determines that the violation was corrected within the 31-day period for corrective action, the Commissioner shall forgive the forgivable portion of the penalty. If the Commissioner determines that the violation was not corrected within the 31-day period, the Commissioner shall serve notice of this determination.

The following corrective action is required by this Administrative Order:

1. Respond fully to the Commissioner's September 25, 2017 subpoena and the January 25, 2018 request for information pursuant to the subpoena.

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. 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, subs. 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).

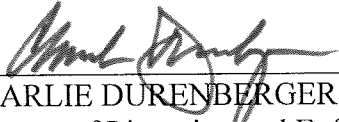
The penalty imposed upon Respondent by this Administrative Order, other than the forgivable portion, is due and payable ten days after the date the Administrative Order becomes

final. If the Commissioner determines that the violation was 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.

Dated: 2/7/18

KEN B. PETERSON
Commissioner

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

