

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of James Warren Armstrong,
dba James Armstrong Drywall, LLC

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against James Warren Armstrong, dba James Armstrong Drywall, 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 \$7,000, of which \$2,000 shall be forgiven if Respondent demonstrates to the Commissioner by the 31st day after this Administrative Order his full compliance with the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016).

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, using James Armstrong Drywall, LLC or James Warren Armstrong or any other business name, in the state of Minnesota as defined in Minn. Stat. § 181.723, subds. 1 and 2 (2016) until such time as the Respondent:

1. fully responds to the Commissioner’s September 7, 2017 Subpoena Duces Tecum;
2. registers with or secures licensure from the Minnesota Department of Labor and Industry (“Department”), as required by law; and
3. otherwise complies with Minnesota statutes referenced below in the “Conclusions of Law” section below.

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

II. FINDINGS OF FACT

1. Respondent registered a limited liability company under the name James Armstrong Drywall, LLC with the Minnesota Secretary of State on July 30, 2009 and was assigned File No. 3433333-2. Respondent was named as the Manager and 34134 Dolphin Street NW, Princeton, Minnesota was listed as the company’s Registered and Principal Executive Office addresses. This registration was administratively terminated on February 26, 2013 for failure to renew.
2. On September 5, 2017, the Department opened an investigation of Respondent based on information indicating that Respondent may have engaged in violations of the Minnesota statutes governing the classification of workers in the construction industry.

3. On September 7, 2017, a Department investigator mailed a Subpoena Duces Tecum via first-class and certified mail to Respondent at its Registered and Principal Executive Office address, which is also the address listed on Respondent's current Minnesota driver's license. The first-class mailing was not returned to the Commissioner by the U.S. Postal Service ("USPS").
4. "Jim Armstrong" accepted service of the certified mailing by signing the certified mail receipt and returning it to the Department on September 21, 2017.
5. When Respondent failed to respond to the subpoena, the Department investigator mailed a follow up letter with a copy of the Subpoena Duces Tecum via first-class and certified mail to Respondent at the same address on December 1, 2017. Neither the first-class nor the certified mailing were returned to the Commissioner by the USPS.
6. As of the date of this Order, Respondent has failed to respond to the Subpoena Duces Tecum.
7. In the course of its investigation, the Department learned that in 2016 and 2017, Respondent performed residential building construction and improvement services for which registration in the Registration Program is required, as a subcontractor for Chenlee Liu.
8. As of the date of this Order, Respondent has not secured Department licensure nor has it registered with the Department in the Contractor Registration Program.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. *See* Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondent performed residential building or improvement services without being licensed by the Department or registered in the Registration Program in violation of Minn. Stat. §§ 181.723, subds. 7 and 8a, and 326B.701, subds. 2(a) and (b) 5(b)(1) (2016).
3. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 2(b) (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 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 (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 violations were not corrected within the 31-day period for corrective action, 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: 1/5/18

KEN B. PETERSON
Commissioner


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