

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of Maki Painting Inc

**LICENSING ORDER  
WITH PENALTY**

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**I. ORDER**

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Maki Painting Inc (“Respondent”).

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2016), the Commissioner hereby assesses against Respondent a monetary penalty of \$5,500, of which \$2,500 is forgiven pursuant to Minn. Stat. § 326B.701, subd. 6(b) (2016).

Pursuant to Minn. Stat. § 326B.082, subs. 11(b) and 12 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR655401, until such time that Respondent provides a complete answer to the Commissioner’s October 20, 2017 subpoena and pays the monetary penalty imposed herein.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), the Commissioner also hereby orders Respondent and its principal, Jesse Thomas Maki, during the period of contractor registration suspension, to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Minnesota Department of Labor and Industry’s (“Department”) 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 Respondent and its principal, Jesse Thomas Maki, to cease and desist from registering in the Registration Program under the business name Maki Painting Inc or any other business or personal name until full compliance with this Licensing Order is achieved.

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, Minnesota law has required all contractors who provide or offer to provide commercial or residential building construction or improvement services in Minnesota to be registered in the Department’s Construction Contractor Registration Program (“Registration Program”) if they are not required by the Department to hold a license.
2. On April 29, 2009, Respondent registered with the Minnesota Secretary of State under file No. 3321112-2 with a Registered Office at 9025 Forestview Lane N., Maple Grove, Minnesota and a Principal Executive Office at 4351 Greenhaven Drive, Vadnais Heights, Minnesota. Jesse Maki was named as the Chief Executive Officer.

3. On September 16, 2012, Respondent registered with the Department in the Registration Program using its Principal Executive Office address and was issued registration No. IR655401. Jesse Maki was named the President and sole owner of Respondent.
4. Respondent has not been the subject of any previous investigation or enforcement action by the Department.
5. On October 19, 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.
6. On October 20, 2017, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at both the Vadnais Heights and the Maple Grove addresses. The subpoena required Respondent to provide specific information relating to its subcontractors and employees as well as the contractors for which Respondent has provided building construction or improvement services from January 1, 2015 through the date of the subpoena.
7. Neither first-class mailing was returned to the Commissioner by the U.S. Postal Services ("USPS"). The certified mail return receipt for the Vadnais Heights address was returned to the Commissioner on November 1, 2017 with an illegible signature.
8. On November 13, 2017, the Department received a partial response to the Commissioner's subpoena from the Respondent.
9. Respondent's subpoena response was deemed incomplete because it failed to include critical documentation the Commissioner requested, most significantly the Respondent's 2015 and 2016 federal business tax returns and all employee, subcontractor and contractor documentation for 2017. Respondent also failed to provide business addresses, telephone numbers, written contracts and follow up documentation for all of Respondent's subcontractors since January 1, 2015.
10. Based on Respondent's partial response to the subpoena, the Department discovered that Respondent hired and paid the following unregistered, unlicensed contractors to perform commercial or residential building construction or improvement services in Minnesota on its behalf in 2015: AG Hernandez Painting LLC, Hernandez Quality Painting LLC, Manuel Serrato, and Omar Rosales.
11. Based on Respondent's partial response to the subpoena, the Department discovered that Respondent hired and paid the following unregistered, unlicensed contractors to perform commercial or residential building construction or improvement services in Minnesota on its behalf in 2016: Jose Castellanos LLC, Lopez Painting LLC, Jose Medina Painting LLC, Manuel Serrato LLC and Omar Rosales LLC.
12. On November 29, 2017, the Department investigator mailed a follow up letter to the same addresses for Respondent requesting a complete response to the subpoena by no later than December 11, 2017.

13. Again neither first-class mailing was returned to the Commissioner by the USPS. The certified mailing to the Vadnais Heights address was not returned to the Commissioner. The certified mailing to the Maple Grove address was returned to the Commissioner marked "UNCLAIMED."
14. As of the date of this Licensing Order, Respondent has not fully responded to the Commissioner's October 20, 2017 subpoena.

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

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2016).
2. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11(b)(6) (2016).
3. Respondent hired several persons 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 Respondent gained economic benefit in not complying with the law; and other factors as justice may require.

The \$2,500 portion of the monetary penalty that was assessed for the violation of hiring unregistered subcontractors has been forgiven pursuant to Minn. Stat. § 326B.701, subd. 6(b) (2016) as it was a first violation.

### **V. REQUEST FOR HEARING**

Pursuant to Minn. Stat. § 326B.082, subd. 12(c) (2016), Respondent 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. Respondent's review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 12(c) (2016).

If Respondent submits 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](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 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).


Respondent is prohibited from applying for reinstatement of his contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

The monetary penalty assessed against the Respondent 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: 1/4/18

KEN B. PETERSON  
Commissioner

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