

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Construction Contractor
Registration of Mesa Construction, LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Mesa Construction, LLC (“Respondent”).

Pursuant to Minn. Stat. §§ 181.723, subd. 4(a) (1); 326B.082, subd. 12(b); and 326B.083 (2016), the Commissioner hereby assesses against Respondent a monetary penalty of \$2,000.

Pursuant to Minn. Stat. §§ 326B.082, subds. 11(b) and 12, and 326B.083 (2016), the Commissioner hereby suspends the construction contractor registration of Respondent, No. IR677591, until such time that Respondent provides a complete response to the Commissioner’s August 1, 2016 subpoena and subsequent requests for documentation, and pays the monetary penalty assessed above.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), the Commissioner also hereby orders Respondent and its principal(s) to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Construction Contractor Registration Program (“Registration Program”) is required until full compliance with this Licensing Order is achieved, including the submission of a complete response to the Commissioner’s August 1, 2016 subpoena and payment of the monetary penalty assessed above.

Pursuant to Minn. Stat. § 326B.082, subd. 11(a)(b)(5) (2016), the Commissioner also hereby orders Respondent and its principal(s) to cease and desist from registering in the Registration Program under the business name Mesa Construction, LLC or any other business name.

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

II. FINDINGS OF FACT

1. Respondent is engaged in the business of providing building construction or improvement services and held a construction contractor registration, No. IR677591, issued by the Commissioner on February 25, 2014. In its registration, Respondent asserted that it is owned solely by Ines Sandoval and that its business address is 12320 Geneva Way, Apple Valley, MN 55124.

2. According to the records of the Minnesota Secretary of State, Mesa Construction, LLC has a registered office at 12320 Geneva Way, Apple Valley, MN 55124.
3. As a registered construction contractor, Respondent must adhere to the Minnesota statutes and regulations governing Contractor Registration and construction worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2016) and Minn. R. Chapter 5224 (2015).
4. As a result of a review of the records of Legacy Contracting, Inc., the Department opened an investigation of Respondent on July 25, 2016 to determine whether Respondent had engaged in violations of the statutes and rules governing the classification of workers in the construction industry.
5. On August 1, 2016, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at the Apple Valley address it provided in its registration.
6. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees. Delivery of the subpoena sent via certified mail was accepted on Respondent's behalf and the subpoena sent via first-class mail was not returned by the United States Postal Service ("USPS").
7. On August 17, 2016, the Department investigator received a letter from Vincent O. Johnson of VJ Total Services, LLC ("VJTS") stating that he was representing Respondent and asking that the deadline for Respondent's response to the subpoena be extended. The request was granted.
8. When Respondent failed to respond to the subpoena, the Department investigator mailed a second request for information to Respondent at the Apple Valley address on September 30, 2016. A copy of the letter was also mailed to VJTS. The letters were not returned by the USPS.
9. On October 12, 2016, Respondent's representative provided information which showed that Respondent had hired 12 unregistered subcontractors and that Respondent had likely misclassified nine individuals as independent contractors who should have been treated as employees as they did not appear to meet the "nine factor test" established in Minn. Stat. § 181.723, subd. 4(a) (2016).
10. On October 28, 2016, the Department investigator mailed a letter requesting that Respondent provide documentation to [rove that the nine named subcontractors met the requirements of the nine factor test.
11. The Department investigator made phone calls to VJTS on November 7, 2016 and December 7, 2016 to determine if the documentation was available. Respondent's representative stated that he was trying to get the information.
12. On March 3, 2017, the Department investigator made a final call to VJTS who admitted that he was unable to get his client to respond to his requests.

13. Both the subpoena and supplemental request for information required a response from Respondent within 30 days of the Commissioner's service of the same.
14. The Commissioner has received no reply from Respondent as of the date of this Order

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723 (2016) and 326B.082, subd. 11 (b)(1) (2016).
2. Respondent failed to comply with a request for information from the Commissioner. 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. 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, subds. 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.

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 its contractor registration until full compliance with the terms of this Licensing Order is achieved, including the submission of a complete response to the Commissioner's August 1, 2016 subpoena and subsequent requests for information, and payment of the \$2,000 monetary penalty assessed in this Order.


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: _____

3/14/17

KEN B. PETERSON
Commissioner

BY: _____


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