

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of 5Way Contractors Inc.

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against 5Way Contractors 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 \$5,000.

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR671040, until such time that Respondent provides a complete and truthful response to the Commissioner’s April 5, 2018 subpoena and pays the monetary penalty imposed above.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), the Commissioner also hereby orders Respondent, during the period of the 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 to cease and desist from registering in the Registration Program under the business name 5Way Contractors Inc. or any other business or personal name.

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 Registration Program, if they are not required by the Department to hold a license.
2. On July 22, 2013, Respondent registered as a domestic business corporation with the Minnesota Secretary of State under file No. 682463900026 with Francis Onu named as the Chief Executive Officer and Registered Agent. The Registered Office Address is

1566 Germain Landings, St. Paul, Minnesota. This registration is active and in good standing as of the date of this Licensing Order.

3. On August 12, 2013, Respondent registered with the Department in the Registration Program and was issued registration No. IR671040. In its registration, Respondent named Francis Onu as its sole owner and listed its business address as PO Box 28425, Brooklyn Park, Minnesota.
4. On April 3, 2018, 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.
5. On April 5, 2018, the Commissioner issued a Subpoena Duces Tecum to Respondent requesting information about its business structure, employees and subcontractors. Respondent's response to the subpoena was due on April 26, 2018.
6. On April 27, 2018, Francis Onu, identifying himself as Respondent's "Principal," sent an email to the Department investigator stating that "My team and I will require some more time to respond according to your demands," in reference to the subpoena.
7. On April 30, 2018, the Department investigator responded to Respondent's email stating that its subpoena response was late, and informing Mr. Onu that he must request a formal extension to answer, including a deadline, through the Department.
8. As of the date of this Licensing Order, Respondent has not responded to either the Subpoena Duces Tecum or the Department investigator's April 30, 2018 email message.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. 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).

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 or submitting a new application to the Registration Program 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: 6/12/18

KEN B. PETERSON
Commissioner


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