

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of J & A Painting LLC

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against J & A Painting LLC (“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 \$4,000.

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. IR686768, until such time that Respondent provides a complete answer to the Commissioner’s February 1, 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 and its principals, including Adriana Garcia, 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 principals, including Adriana Garcia, during the period of contractor registration suspension, to cease and desist from registering in the Registration Program under the business name J & A Painting LLC, 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 Construction Contractor Registration Program (“Registration Program”) if they are not required by the Department to hold a license.
2. On October 17, 2014, Respondent registered as a domestic limited liability company with the Minnesota Secretary of State (“MN SOS”) under file No. 788981300022 with

Adriana Garcia named as the Manager. This registration is active and in good standing as of the date of this Licensing Order.

3. On October 17, 2014, Respondent registered with the Department in the Registration Program and was issued registration No. IR686768. Respondent named Adriana Garcia as its sole owner.
4. On January 24, 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 February 1, 2018, the Commissioner issued a Subpoena Duces Tecum to Respondent requesting information about its business structure, employees and subcontractors. A Department investigator sent the subpoena via first class and certified mail to the address included in Respondent's Department registration and its MN SOS registration: 562 Brunson Street, St. Paul, Minnesota.
6. The certified mailing return receipt card was returned to the Department with an illegible signature dated February 2, 2018, and the first-class mailing was not returned.
7. When Respondent failed to respond to the subpoena, the Department investigator mailed a follow up letter to the Respondent on April 3, 2018, stating that its subpoena response was past due. This was sent first-class and certified mail to the same address.
8. The certified mailing return receipt card was returned to the Department with the name "DENISS" in a child's handwriting, and the first-class mailing was not returned.
9. On April 5, 2018, Ms. Garcia called and left a voicemail message for the Department investigator. The investigator returned the call on the same date, but Ms. Garcia did not answer and her voicemail box was full.
10. On April 6, 2018, the Department investigator called Ms. Garcia back again. Her voicemail box was still full, so the investigator sent an email message to Respondent using the email address Respondent provided on its Department registration. The email message read as follows:

"I've tried calling you back but you didn't answer and your voicemail box is full. You are significantly late in responding to your company's subpoena duces tecum. Your response was due February 21, 2018. You can call me with questions, yet I strongly encourage you to start gathering your response as soon as possible. I am leaving the office in a few minutes. I will be here Monday – Thursday next week. Be advised that failure to comply with the subpoena is deemed a contempt of court pursuant to Minn. Stat. § 326B.082, subd. 2(d). Provision of a response to the subpoena that is false or incomplete will result in a monetary penalty of up to \$10,000 pursuant to Minn. Stat. § 326B.082, subd. 7 (a)(b) and subd. 12 (b) (2016)."
11. On April 10, 2018, the Department investigator returned Ms. Garcia's call again, but she did not answer and her voicemail box was again full.

12. As of the date of this Licensing Order, Respondent has not responded to the subpoena or the April 6, 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, 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.

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).

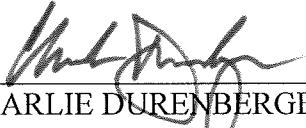
Respondent is prohibited from applying for reinstatement of its contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

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: 5/16/18

KEN B. PETERSON
Commissioner

BY: 

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