

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Carlos Garcia-Nunez,
individually and dba G&G Drywall

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Carlos Garcia-Nunez, individually and dba G&G Drywall (“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: (1) the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016) or (2) Residential Building Contractor or Residential Remodeler licensing requirements of Minn. Stat. § 326B.805, subd. 1 (2016), as applicable.

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 Carlos Garcia-Nunez, individually and dba G&G Drywall or any other business name, to cease and desist from performing public or private sector commercial or residential building construction or improvement services in the state of Minnesota as defined in Minn. Stat. § 181.723, subds. 1 and 2 (2016) until such time as the Respondent fully responds to the Commissioner’s February 9, 2018 Subpoena Duces Tecum and demonstrates its full compliance with the registration or licensing requirements cited above .

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 commercial or residential building construction or improvement services but is neither licensed by the Commissioner nor registered in the Minnesota Construction Contractor Registration Program (“Registration Program”) administered by the Commissioner.

2. On February 2, 2018, the Minnesota Department of Labor and Industry (“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. The Department initiated this investigation based on evidence that UNIVERSAL SPRAY & DRYWALL, INC. (“USDI”) hired and paid Respondent to perform drywall work in Minnesota in 2016 and 2017. The invoices Respondent submitted to USDI included its address as 3126 Manchester Place, Bismarck, ND.
4. A Department investigator mailed a Subpoena Duces Tecum via first-class and certified mail to Respondent at 3126 Manchester Place, Bismarck, ND on February 9, 2018. The first-class mailing was not returned to the Department by the U.S. Postal Service (“USPS”). The subpoena sent via certified mail to this address on the same date was returned to the Department by the USPS as “UNCLAIMED.”
5. On February 13, 2018, Respondent Carlos Garcia-Nunez called the Department investigator to confirm that he received the subpoena. He promised to respond to the subpoena and register in the Registration Program.
6. On March 16, 2018, the Department investigator mailed a follow up letter and a copy of the original Subpoena Duces Tecum via first-class and certified mail to Respondent at the same address. The first-class mailing was not returned to the Department by the USPS. The certified return receipt was returned to the Department with an illegible signature by Respondent’s “agent” dated March 22, 2018.
7. As of the date of this Order, Respondent has not responded to the Subpoena Duces Tecum nor has he contacted the Department since the February 13, 2018 telephone call.
8. As of the date of this Order, Respondent has not registered in the Registration Program or obtained a license issued by the Department.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondent committed a violation of Minn. Stat. § 326B.082, subd. 2(b) (2016) by failing to respond to a written request for production of documents from the Commissioner.
3. Respondent performed building construction or improvement services and was treated as an independent contractor despite not being licensed by the Department or registered in the Registration Program in violation of Minn. Stat. § 326B.701, subd. 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.

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. In addition, if the Commissioner determines that Respondent has not achieved compliance with the Contractor Registration or residential building contractor or residential remodeler licensing requirements cited above within the 31-day period for corrective action, Respondent has the right to a review of the Commissioner's determination by requesting a hearing within 20 days after the Commissioner issues notice of this determination. 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, subds. 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.

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 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 monetary 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 Respondent has failed to comply with the Contractor Registration or licensing provisions cited above, 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: 4/18/18

KEN B. PETERSON
Commissioner

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