

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Diversified Flooring L.L.C.
And Timothy John Ophus, Individually

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Diversified Flooring L.L.C. and Timothy John Ophus, individually (“Respondents”).

Pursuant to Minn. Stat. §§ 326B.701 (2016); 326B.082, subd. 7 (2016) and 326B.083 (2016), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$2,000 of which \$2,000 shall be forgiven if Respondents demonstrate to the Commissioner by the 31st day after this Administrative Order is issued that Respondents have successfully registered with the Commissioner in the Minnesota Construction Contractor Registration Program (“Registration Program”) if they have acted and are able to act as independent contractors in the state of Minnesota.

The Commissioner also hereby orders Respondents to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondents to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required. The cease and desist order remains in effect until compliance with the registration requirements of Minn. Stat. § 326B.701, subd. 2(b) (2016) is achieved as appropriate.

The Commissioner takes the above action based upon the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

1. Respondents are engaged in the business of providing building construction or improvement services, but have not registered with the Registration Program and are not licensed by the Commissioner in any capacity.
2. According to the records of the Minnesota Secretary of State, Diversified Flooring L.L.C. was initially filed as a limited liability company on January 22, 2014 and this filing is currently active. Timothy John Ophus is listed as the manager in the business filing with the Secretary of State, and Respondents disclosed their registered office address as 4060 Hunters Lane, Webster, MN.

3. On March 1, 2018, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondents based on information that indicated Respondents may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
4. On March 12, 2018, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondents. The subpoena required the production of documentation relating to Respondents’ subcontractors, contractors, and employees.
5. On April 2, 2018, Respondents sent a response to the subpoena but failed to register with the Registration Program. In their response, Respondents provided a list of contractors they worked for in 2015 and 2016 and stated that they did not have any subcontractors.
6. On April 12, 2018, the Department investigator sent a letter to Respondents reminding them of the Registration Program requirements and warning them of the consequences of failure to register.
7. Respondents have not registered in the Registration Program as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondents committed a violation of applicable law. Minn. Stat. §§ 181.723; Minn. Stat. §§ 326B.701 and 326B.082, subd. 7 (2016).
2. Respondents failed to register with the Registration Program before providing building construction or improvement services in Minnesota. Minn. Stat. § 326B.701, subd. 2(b) (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 Respondents 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), Respondents shall have 30 days after issuance of this Administrative 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. The request for hearing must specifically state the reasons for seeking review of the order. 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 8 (2016).

If Respondents submit 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 Respondents do not request a hearing or Respondents' 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).

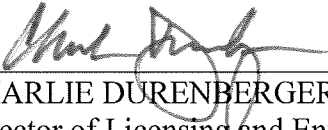
The monetary penalty assessed upon Respondents by this Administrative Order, other than the forgivable portion, is due and payable on the date the Administrative Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2016). If the Commissioner determines that Respondents are not employees of another contractors and failed to successfully register in the Registration Program within 31 days of the issuance of this Order, 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), Respondents are 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: 6/29/18

KEN B. PETERSON
Commissioner


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