

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Joes Construction, Inc.
and Frankie Joe Hernandez Jr., Individually

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Joes Construction, Inc. (“JCI”) and Frankie Joe Hernandez Jr., Individually (hereinafter referred to jointly as “Respondents”).

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2016), the Commissioner hereby assesses against Respondent JCI 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 JCI, No. IR 700458, until such time that Respondents provide a complete answer to the Commissioner’s June 15, 2018 subpoena and pay the monetary penalty imposed herein.

Pursuant to Minn. Stat. § 326B.082, subd. 12(b) (2016), the Commissioner also hereby orders Respondents, 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 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 Respondents to cease and desist from registering in the Registration Program under the business name Joes Construction, Inc. 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. Respondents are engaged in the business of performing public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required.
2. JCI is currently registered with the Minnesota Department of Labor and Industry (“Department”) through the Registration Program holding registration no. IR700458 which was issued on October 21, 2015. When JCI registered, it disclosed that its owner is Frankie Joe Hernandez Jr., and the company’s business address is 3121 Cedar Ave., #101, Minneapolis, MN.
3. JCI was registered with the Minnesota Secretary of State as a domestic business corporation on October 1, 2015, but this registration is inactive due to administrative dissolution on February 27, 2017. The business registration lists the company’s registered office address as 3121 Cedar Ave., #101, Minneapolis MN.

4. On May 25, 2018, the Department opened an investigation of Respondents based on information that indicated that Respondents may have engaged in violations of the statutes and rules governing the classification of workers in the construction industry.
5. On June 15, 2018, a Department investigator sent Respondents a subpoena duces tecum requiring the production of records and other information relating to Respondents' contractors, subcontractors and employees. The subpoena was sent via first-class and certified mail to the address provided in Respondents' contractor registration.
6. On July 22, 2018 the subpoena sent via certified mail was returned as it was "unclaimed" and the USPS was "unable to forward." On July 27, 2018 the subpoena sent via first-class mail was returned as it was "attempted not known" and the USPS was "unable to forward."
7. On September 13, 2018, the Department investigator sent Respondents a letter requesting a response to the subpoena and warning of the consequences of their continued failure to respond.
8. As of the date of this Order, Respondents have failed to provide a response to the subpoena.

III. CONCLUSIONS OF LAW

1. Respondents committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2016).
2. Respondents failed to comply with a subpoena and request for information 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 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. 12(c) (2016), Respondents 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 12(c) (2016).

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


Respondents are prohibited from applying for reinstatement of their contractor registration until such time full compliance with the terms of this Licensing Order has been achieved.

The monetary penalty assessed against the Respondents 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), Respondents are 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: 10/11/18

KEN B. PETERSON
Commissioner

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