

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Jason Edward Horn,
dba Jay Horn Construction Services

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Jason Edward Horn, dba Jay Horn Construction Services (“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. IR742299, until such time that Respondent provides a complete and truthful response to the Commissioner’s June 15, 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 Jay Horn Construction Services, Jason Horn, 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 October 22, 2008, Respondent registered an Assumed Name of “Jay Horn Construction Services” with the Minnesota Secretary of State under file No. 3056503-2.

Jason Edward Horn is identified as the Nameholder. No Registered Office Address is included but the Principle Place of Business address is listed as 1761 – 146th Lane NW, Andover Minnesota. This registration is active and in good standing as of the date of this Licensing Order.

3. On October 23, 2012, Respondent registered with the Department in the Registration Program and was issued registration No. IR658214. In his registration, Respondent listed his business address as 1761 – 146th Lane NW, Andover, Minnesota. This registration expired on December 31, 2015 and has not been renewed.
4. On June 8, 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 June 15, 2018, the Commissioner issued a Subpoena Duces Tecum to Respondent requesting information about his business structure, employees and subcontractors. Respondent's response to the subpoena was due on July 5, 2018.
6. A Department investigator sent the subpoena to Respondent at 1761 – 146th Lane NW, Andover, Minnesota via US Postal Service ("USPS") first-class and certified mail on June 15, 2018. The first-class mailing was not returned to the Department. The certified mailing was returned to the Department on July 2, 2018 by the USPS marked "RETURN TO SENDER – ATTEMPTED – NOT KNOWN – UNABLE TO FORWARD."
7. On July 25, 2018, a Department investigator sent follow up subpoena mailings via first-class and certified mail to the Respondent at the same address indicating to him that his subpoena response was late. Both mailings were returned to the Department by the USPS marked "RETURN TO SENDER – UNABLE TO FORWARD." In black ink, someone had written on the certified mailing "Return to sender/hasn't lived there for 5 years."
8. After learning that Respondent had registered in the Registration a second time on June 11, 2018 and was issued registration No. IR742299, the Department investigator sent to Respondent a copy of the June 15 subpoena. This mailing was sent to Respondent on August 6, 2018, via first-class and certified mail to the new mailing address he provided in his most recent registration in the Registration Program: 3500 Vicksburg Lane N., Plymouth, Minnesota. The first-class mailing was not returned to the Department. The Department received the certified mail return receipt card on August 18, 2018 with an illegible signature in black ink.
9. As of the date of this Licensing Order, Respondent has not responded to the Subpoena Duces Tecum.
10. Based on its investigation, the Department discovered that Respondent performed building construction or improvement work on behalf of Reuter Walton Construction, Inc. in 2017 despite not being registered with or licensed by the Department at that time.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2016).
2. 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).
3. Respondent failed to comply with a subpoena issued by the Commissioner in violation of 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 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. 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).

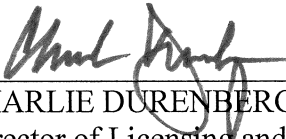
Respondent is prohibited from applying for reinstatement of his contractor registration or submitting a new application to the Registration Program until such time full compliance with the terms of this Licensing Order has been achieved.

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: 10/24/18

KEN B. PETERSON
Commissioner

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