

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Aitkens Elegant Granite Co.

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Aitkens Elegant Granite Co. (“Respondent”).

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2018), the Commissioner hereby assesses against Respondent a monetary penalty of \$4,000.

Pursuant to Minn. Stat. § 326B.082, subs. 11(b) and 12 (2018) and Minn. Stat. § 326B.083 (2018), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR728221, until such time that Respondent provides a complete and truthful response to the Commissioner’s July 25, 2018 subpoena and pays the monetary penalty imposed above.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2018), 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) (2018), the Commissioner also hereby orders Respondent to cease and desist from registering in the Registration Program under the business name AITKENS ESSENTIALS INC., Aitkens Elegant Granite Co. 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 January 24, 2013, Darryn and Frankie Aitkens registered AITKENS ESSENTIALS INC. as a domestic business corporation with the Minnesota Secretary of State (“MN SOS”) under file No. 642300800025. This registration became inactive for nonrenewal on December 31, 2017.

3. On May 2, 2017, Respondent registered as a domestic business corporation with the MN SOS under file No. 948740100021 with a Registered Office Address at 11520 – 96th Avenue N., Maple Grove, Minnesota (“Maple Grove address”) and a mailing address of 7517 Myers Avenue N., Minnesota (“Minneapolis address”). This registration is active and in good standing as of the date of this Licensing Order.
4. On August 2, 2017, Respondent registered with the Department in the Registration Program under the name “AITKENS ESSENTIALS dba Aitkens Elegant Granite” and was issued registration No. IR728221. In its registration, Respondent listed the Maple Grove address as its business address and named Darryn and Frankie Aitkens as co-owners.
5. On July 18, 2018, the Department opened an investigation of Respondent based on information indicating that Respondent may have engaged in violations of the Minnesota statutes governing building construction contractor registration and the classification of workers in the construction industry.
6. On July 25, 2018, the Commissioner issued a Subpoena Duces Tecum to Respondent requesting information about its business structure, employees, subcontractors and contractors.
7. On the same day, a Department investigator mailed the Subpoena Duces Tecum via first-class and certified mail to Respondent at the Maple Grove address with a response deadline of August 14, 2018.
8. The US Postal Service (“USPS”) did not return the first-class mailing to the Department. The certified mailing was returned to the Department marked “RETURN TO SENDER – UNDELIVERABLE AS ADDRESSED – UNABLE TO FORWARD” by the USPS.
9. Because Respondent failed to reply to the subpoena, the Department investigator mailed copies of the subpoena with a reminder letter via first-class and certified mail to Respondent at its Maple Grove address on October 24, 2018. The USPS did not return either the first-class or certified mailings. The certified mail return receipt was returned to the Department with an illegible signature evidencing receipt of delivery on October 29, 2018.
10. On November 19, 2018, the Department received a partial response to the Subpoena Duces Tecum via US mail.
11. On November 27, 2018, the Department investigator sent another follow up letter to Respondent requesting the documents Respondent failed to provide in its first subpoena response: 2017 business tax returns, subcontractor names and contact information, and registration and/or license numbers of its subcontractors. Respondent was given a December 10, 2018, deadline to respond to this follow up letter.

12. As of the date of this Licensing Order, Respondent has not responded fully to the July 25, 2018 Subpoena Duces Tecum and has not responded at all to the Department investigator's November 27, 2018 letter.

III. CONCLUSIONS OF LAW

1. Respondent committed a violation of applicable law. Minn. Stat. §§ 181.723, 326B.701, and 326B.082, subd. 11(b)(1) (2018).
2. Respondent failed to comply with a subpoena and subsequent information request issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11(b)(6) (2018).

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) (2018), 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) (2018).

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 (2017), and Minn. Stat. § 326B.082, subd. 12(c) (2018). 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) (2018).


Respondent is 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 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) (2018). 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 (2018) and 326B.083, subd. 2 (2018). 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 (2018).

Also, pursuant to Minn. Stat. § 16D.13 (2018), 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 (2018) will begin to accrue on the unpaid portion of the penalty.

Dated: 1/11/19

CHRISTOPHER LEIFELD
Acting Commissioner

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