

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of DOS AMIGOS DRYWALL INC.  
and Jorge De la Cruz, Individually

**ADMINISTRATIVE ORDER  
WITH PENALTY**

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**I. ORDER**

The Commissioner of the Minnesota Department of Labor and Industry “Commissioner”) issues this Order against DOS AMIGOS DRYWALL INC. and Jorge De la Cruz, individually (“Respondents”).

Pursuant to Minn. Stat. §§ 326B.701 (2018); 326B.082, subd. 7 (2018) and 326B.083 (2018), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$10,000.

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 such time that Respondents respond to the subpoena issued by the Commissioner on October 4, 2018; comply with the terms of the Commissioner’s Licensing Order with penalty issued against Dos Amigos Drywall, Inc. on August 10, 2016; comply with the Commissioner’s Administrative Order with penalty issued against Jorge de la Cruz on August 10, 2016; and comply with the Commissioner’s Administrative Order with penalty issued against Dos Amigos Drywall, Inc. and Jorge de la Cruz, on September 29, 2017.

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. Respondents were registered with the Minnesota Department of Labor and Industry (“Department”) and held registration no. IR668664 which was issued on June 6, 2013 until it was suspended on August 10, 2016 pursuant to a Licensing Order issued by the Commissioner. The Licensing Order suspended Respondent Dos Amigos Drywall, Inc.’s registration until it provided a complete response to a previously issued subpoena and paid a \$5,000 monetary penalty. The Order is final and the monetary penalty remains unpaid.

3. On August 10, 2016, the Commissioner issued an Administrative order against Respondent Jorge de La Cruz, ordering Respondent to cease and desist from performing building construction services for which a registration is required and assessed a \$1,000 monetary penalty. That Order is now final and the penalty remains unpaid.
4. On September 29, 2017, the Commissioner issued an Administrative Order against Respondents, ordering them to cease and desist from performing building construction services for which a registration is required until they complied with the previous subpoena and Orders issued by the Commissioner.
5. According to the records of the Minnesota Secretary of State, DOS AMIGOS DRYWALL INC. was filed as a corporation on November 19, 2003 and this filing is currently active. Jorge de la Cruz is listed as the chief executive officer. In the business filing with the Secretary of State, Respondents disclosed their registered office address as 12675 Germane Ave., #02, Apple Valley, MN.
6. According to the form 1099 issued by the general contractor YTR Drywall, Respondent DOS AMIGOS DRYWALL INC.'s address is listed as 2847 7<sup>th</sup> St. W., #101, West Fargo, ND.
7. Respondents provided building construction or improvement services to YTR Drywall & Painting and were paid \$177,303 in 2017.
8. On September 24, 2018, the 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.
9. On October 4, 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. The subpoena was sent to the Apple Valley and the West Fargo addresses.
10. On November 11, 2018, the subpoena sent via certified mail was returned as it was "unclaimed" and the USPS was "unable to forward." The subpoena sent via first-class mail was not returned.
11. On December 27, 2018, the Department sent Respondents a letter requiring a response to the subpoena.
12. Respondents have not responded to the subpoena 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 (2018).
2. Respondents failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11(b)(6) (2018).

3. Respondents committed a violation of Minn. Stat. §§ 181.723, subd. 2 and 326B.701, subd. 2 (2018) by providing building construction or improvement services without being licensed or registered by the Commissioner.
4. Respondent Dos Amigos Drywall, Inc. violated the terms of the Commissioner's August 10, 2016 Licensing Order with penalty. Respondent has unresolved violations and unpaid monetary penalty in violation of Minn. Stat. §§326B.082, subd. 11(a) and (b)(5) (2018).
5. Respondent Jorge de la Cruz violated the terms of the Commissioner's August 10, 2016 Licensing Order with penalty. Respondent has unresolved violations and unpaid monetary penalty in violation of Minn. Stat. §§326B.082, subd. 11(a) and (b)(5) (2018).
6. Respondents Dos Amigos Drywall, Inc. and Jorge de la Cruz violated the terms of the Commissioner's September 29, 2017 Administrative Order with penalty. Respondents have unresolved violations and unpaid monetary penalty in violation of Minn. Stat. §§326B.082, subd. 11(a) and (b)(5) (2018).

#### **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 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 (2018), 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 (2018).

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 (2017), and Minn. Stat. § 326B.082, subd. 8 (2018). These materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, and are also available at [www.revisor.mn.gov](http://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 (2018).

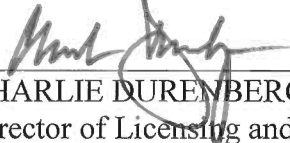
The monetary penalty assessed upon Respondents by this Administrative Order, other than the forgivable portion, is due and payable on the date the Administrative Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2018). If the Commissioner determines that Respondents are not employees of 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 (2018).

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 (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), 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 (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