

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Atterbury industries LLC

**ADMINISTRATIVE ORDER
WITH PENALTY PURSUANT
TO MINN. STAT. § 326B.701**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Respondent Atterbury industries LLC.

Pursuant to Minn. Stat. § 326B.701 (2018); 326B.082, subd. 7 (2018) and 326B.083 (2018), the Commissioner hereby assesses against Respondent a monetary penalty of \$7,000, of which \$2,000 shall be forgiven if Respondent demonstrates to the Commissioner by the 31st day after this Administrative Order is issued that Respondent has corrected the violations identified below. The required corrective action is described in the “Corrective Action” section of this Administrative Order.

The Commissioner also hereby orders Respondent to cease and desist from violating the laws cited in the “Conclusions of Law” section of this Administrative Order. Specifically, the Commissioner orders Respondent 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 the monetary penalty assessed herein is paid, a complete response to the Commissioner’s December 27, 2018 subpoena is submitted, and compliance with the registration requirements of Minn. Stat. § 326B.701, subd. 2(b) (2018) or licensure with the Commissioner 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. Respondent’s business address is: 19349 55th St., Oak Park, MN.
2. Investigation of a licensed residential building contractor by the Minnesota Department of Labor and Industry (“Department”) revealed that the Respondent provided building construction or improvement services in Minnesota in 2017 but was not and has not registered with the Registration Program and was not and has not been licensed by the Department in any capacity.

3. According to the records of the Minnesota Secretary of State, Atterbury industries LLC was initially filed as a limited liability company on October 2, 2017. Legal Corp Solutions LLC is listed as the company's registered agent and this filing is currently inactive. Respondent disclosed its registered office address as: 310 4th Ave S. Ste. 5010, Minneapolis, MN.
4. On December 18, 2018, the Department opened an investigation of Respondent based on information that indicated Respondent may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
5. On December 27, 2018, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent. The subpoena required the production of documentation relating to Respondent's subcontractors, contractors, and employees. The subpoena was mailed to the Oak Park and Minneapolis addresses.
6. On January 17, 2019, 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.
7. On May 1, 2019, a Department investigator sent Respondent a letter requiring a response to the subpoena.
8. Respondent has not responded to the subpoena or registered in the Registration Program as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. § 181.723; Minn. Stat. §§ 326B.701 and 326B.082, subd. 7 (2018).
2. Respondent failed to obtain a license from the Commissioner or register with the Registration Program before providing building construction or improvement services in Minnesota. Minn. Stat. § 326B.701, subd. 2(b) (2018).
3. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 2(b) (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. Minn. Stat. §§ 14.045, subd. 3 and 326B.083, subd. 1.

V. CORRECTIVE ACTION

Within 31 days of issuance of this Administrative Order, Respondent must demonstrate, IN WRITING, to the satisfaction of the Commissioner that the violation specified in “Conclusion of Law” number 3 above has been corrected as specified below.

Failure to demonstrate to the satisfaction of the Commissioner that violation specified in “Conclusion of Law” number 3 above has been corrected, within the 31-day period, shall be cause for subsequent enforcement action, and the forgivable portion of the penalty assessed in this Administrative Order will become due and payable as described in the “Effect of Final Order” section below.

If the Commissioner determines that the violation was corrected within the 31-day period for corrective action, the Commissioner shall forgive the forgivable portion of the penalty. If the Commissioner determines that the violation was not corrected within the 31-day period, the Commissioner shall serve notice of this determination. Failure to fully comply with the approved plan shall also be cause for subsequent enforcement action by the Commissioner.

The following corrective action is required by this Administrative Order:

Secure licensure from the Department or register in the Registration Program, as required, in full compliance with Minn. Stat. §§ 326B.701, subd. 2, 326B.802, and 326B.805, subd. 1 (2018) before performing any additional building construction or improvement services in Minnesota.

VI. REQUEST FOR HEARING

Pursuant to Minn. Stat. § 326B.082, subd. 8 (2018), Respondent shall have 30 days after issuance of this 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. Minn. Stat. § 326B.082, subd. 12(c). The request for hearing must specifically state the reasons for seeking review of the order or notice. If the request for hearing is served by facsimile, 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.

If the Respondent submits to the Commissioner a timely request for hearing, this order shall be stayed unless otherwise ordered by a judge, and a contested case hearing will be commenced. The contested case procedures are set out in chapter 14 of Minnesota Statutes, chapter 1400 of the Minnesota Rules, and sections 326B.081 to 326B.085 of the Minnesota Statutes. Copies of these materials are available at www.revisor.mn.gov or may be purchased from the Minnesota Book Store, telephone (651) 297-3000.

VII. EFFECT OF FINAL ORDER

If Respondent does not request a hearing or submit a timely hearing request to contest this order, it shall become a final order of the Commissioner and will not be subject to review by any court or agency. Minn. Stat. § 326B.082, subd. 8 (2018).


The penalty imposed upon Respondent by this Administrative Order, other than the forgivable portion, is due and payable ten days after the date the Administrative Order becomes final. If the Commissioner determines that the violations were not corrected within the 31-day period for corrective action, 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 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. 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. Minn. Stat. § 326B.082, subd. 17 (2018).

Finally, Respondent is hereby notified that thirty (30) days after the date this 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: 6/13/19

NANCY J. LEPPINK
Commissioner

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