

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of the Construction Contractor  
Registration of Custom Concrete & Roofing, LLC

**LICENSING ORDER  
WITH PENALTY**

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**I. ORDER**

The Commissioner of the Minnesota Department of Labor and Industry ("Commissioner") issues this Order against Custom Concrete & Roofing, LLC ("Respondent").

Pursuant to Minn. Stat. §§ 181.723, subd. 4(a) (1); 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, and 326B.083 (2016), the Commissioner hereby suspends the construction contractor registration of Respondent, No. IR737734, until such time that Respondent provides a complete response to the Commissioner's December 8, 2017 subpoena and subsequent requests for documentation, and pays the monetary penalty assessed above.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), the Commissioner also hereby orders Respondent and its principal(s) to cease and desist from performing public or private sector commercial or residential building construction or improvement services for which registration in the Construction Contractor Registration Program ("Registration Program") is required until full compliance with this Licensing Order is achieved, including the submission of a complete response to the Commissioner's December 8, 2017 subpoena and payment of the monetary penalty assessed above.

Pursuant to Minn. Stat. § 326B.082, subd. 11(a)(b)(5) (2016), the Commissioner also hereby orders Respondent and its principal(s) to cease and desist from registering in the Registration Program under the business name Custom Concrete & Roofing, LLC 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. Respondent is engaged in the business of providing building construction or improvement services and holds a construction contractor registration, No. IR737734, issued by the Commissioner on March 6, 2018. The registration is currently valid through December 31, 2019.
2. In its registration, Respondent asserted that it is owned solely by Joseph Naylor and that its business address is PO Box 7174, Fargo, ND
3. According to the records of the North Dakota Secretary of State, Custom Concrete and Roofing LLC was filed as a North Dakota limited liability company with a registered office at 4910 15<sup>th</sup> Avenue South #208, PO Box 7174, Fargo, ND.

4. As a registered construction contractor, Respondent must adhere to the Minnesota statutes and regulations governing Contractor Registration and construction worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2016) and Minn. R. Chapter 5224 (2015).
5. As a result of a subcontractor complaint, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent on December 4, 2017 to determine whether Respondent had engaged in violations of the statutes and rules governing the classification of workers in the construction industry.
6. On December 8, 2017, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at the 15<sup>th</sup> Avenue South address.
7. The subpoena required the production of documentation relating to Respondent’s subcontractors, contractors, and employees. Both the subpoena sent via certified mail and the first-class letter were returned by the United States Postal Service (“USPS”) marked “Unable to Forward”.
8. Further investigation provided another address for Respondent, 5583 – 36<sup>th</sup> Avenue South, PO Box 7174, Fargo, MN 58106.
9. On December 28, 2017, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondent at the 36<sup>th</sup> Avenue South address.
10. The subpoena required the production of documentation relating to Respondent’s subcontractors, contractors, and employees. The subpoena sent via certified mail was returned by the USPS marked “Unclaimed”; the first-class letter was not returned by the USPS.
11. On March 2, 2018, when Respondent failed to respond to the subpoena, the Department investigator mailed a second request for information to Respondent at its 36<sup>th</sup> Avenue South address. The letter was not returned by the USPS.
12. On March 5, 2018, Respondent’s principal, Joseph Naylor, called the Department investigator and stated that the Commissioner could not mail a subpoena to him and require an answer; or that he never got the certified letter even though it was presented three times or he never received the first-class letters even though the letters were not returned to the Department. The Department investigator then emailed Naylor a copy of the subpoena.
13. On March 6, 2018, Naylor called the Department investigator and stated that the name and address on the subpoena were incorrect and therefore he did not have to respond to the subpoena. The investigator checked the North Dakota Secretary of State registration and confirmed that the name and address on the registration matched the name and address on the subpoena. Naylor called a second time and wanted directions on how to see his North Dakota Secretary of State filing online. When the investigator tried to explain how to access his filing, Naylor became angry and abusive so the investigator terminated the conversation.
14. On March 23, 2018, Respondent’s bookkeeper emailed the Department investigator and requested an extension for Respondent to supply the information. An extension to April 7, 2018 was granted.
15. Both the subpoena and supplemental request for information required a response from Respondent within 30 days of the Commissioner’s service of the same.
16. The Commissioner has received no reply from Respondent as of the date of this Order.

### III. CONCLUSIONS OF LAW

1. Respondent committed violations of applicable law. Minn. Stat. §§ 181.723 (2016) and 326B.082, subd. 11 (b)(1) (2016).
2. Respondent failed to comply with a subpoena and subsequent request for information from the Commissioner. Minn. Stat. §§ 326B.082, subs. 2(b) and 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](http://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 its contractor registration until full compliance with the terms of this Licensing Order is achieved, including the submission of a complete response to the Commissioner's December 8, 2017 subpoena and payment of the \$5,000 monetary penalty assessed in this Order.

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: 5/17/18

KEN B. PETERSON  
Commissioner

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