

STATE OF MINNESOTA  
Department of Labor and Industry

In the Matter of John Jerry Wirtz,  
individually and dba M.S.M.

**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 John Jerry Wirtz, individually and dba M.S.M. (“Respondent”).

Pursuant to Minn. Stat. § 326B.082, subd. 7 (2016) and Minn. Stat. § 326B.083 (2016), 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 31<sup>st</sup> day after this Administrative Order his full compliance with: (1) the Construction Contractor Registration requirements of Minn. Stat. § 326B.701, subd. 2 (2016) or (2) Residential Building Contractor or Residential Remodeler licensing requirements of Minn. Stat. § 326B.805, subd. 1 (2016), as applicable.

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 John Jerry Wirtz, individually and dba M.S.M. or any other business name, to cease and desist from performing public or private sector commercial or residential building construction or improvement services in the state of Minnesota as defined in Minn. Stat. § 181.723, subs. 1 and 2 (2016) until such time as the Respondent fully responds to the Commissioner’s February 20, 2018 Subpoena Duces Tecum and demonstrates its full compliance with the registration or licensing requirements cited above.

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 commercial or residential building construction or improvement services but is neither licensed by the Commissioner nor registered in the Minnesota Construction Contractor Registration Program (“Registration Program”) administered by the Commissioner.

2. On February 15, 2018, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent based on information indicating that Respondent may have engaged in violations of the Minnesota statutes governing workers in the construction industry.
3. The Department initiated this investigation based on evidence that Respondent contracted with the homeowner and received payment to perform window replacement work at a home on Yuma Lane North, Plymouth, Minnesota in 2015. The September 16, 2015 invoice Respondent gave to the homeowner includes a business address of 867 – 97<sup>th</sup> Avenue NE, Blaine, Minnesota.
4. According to a February 13, 2018 incident report the homeowner filed with the Plymouth Police Department, the homeowner gave Respondent a check payable to “M.S.M.” for \$5,000 on October 31, 2015 as a down payment for window replacement work. Reportedly, Respondent John Jerry Wirtz (“Wirtz”) deposited this check into his account but no work was completed. At the time this payment was made, Respondent was neither licensed by the Commissioner nor registered in the Registration Program.
5. A Department investigator mailed a Subpoena Duces Tecum via first-class and certified mail to Respondent at 867 – 97<sup>th</sup> Avenue NE, Blaine Minnesota on February 20, 2018. The subpoena response was due to the investigator by March 12, 2018. Neither mailing was returned to the Department by the U.S. Postal Service (“USPS”).
6. On March 8, 2018, Respondent Wirtz called the Department investigator to confirm that he received the subpoena. He requested an extension to answer the subpoena due to health issues. The investigator gave Wirtz until March 19, 2018 to respond.
7. On March 19, 2018, the Respondent sent an email to the Department investigator requesting another extension to answer the subpoena this time because of problems with his laptop computer. The investigator gave Respondent until March 26, 2018 to respond.
8. On April 23, 2018, after receiving no subpoena response from Respondent, the Department investigator mailed a follow up letter with a copy of the original Subpoena Duces Tecum via first-class and certified mail to Respondent at the same address requiring a response by April 30, 2018. Neither mailing was returned to the Department by the USPS.
9. On April 23, 2018, the Department investigator also sent a high priority email to Respondent requiring a subpoena response no later than April 30, 2018.
10. As of the date of this Order, Respondent has not responded to the Subpoena Duces Tecum nor has he contacted the Department since the March 19, 2018 email.
11. As of the date of this Order, Respondent is not registered in the Registration Program or licensed by the Department.

### **III. CONCLUSIONS OF LAW**

1. Respondent committed violations of applicable law. Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondent committed a violation of Minn. Stat. § 326B.082, subd. 2(b) (2016) by failing to respond to a written request for production of documents from the Commissioner.
3. Respondent offered to perform building construction or improvement services despite not being licensed by the Department or registered in the Registration Program in violation of Minn. Stat. § 326B.701, subd. 2 (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. 8 (2016), Respondent shall have 30 days after issuance of this Administrative Order to request a hearing. In addition, if the Commissioner determines that Respondent has not achieved compliance with the Contractor Registration or residential building contractor or residential remodeler licensing requirements cited above within the 31-day period for corrective action, Respondent has the right to a review of the Commissioner's determination by requesting a hearing within 20 days after the Commissioner issues notice of this determination. 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 or notice. 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 8 (2016).

If the Respondent submits 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 (2015), and Minn. Stat. § 326B.082, subd. 8 (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 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 (2016).

The monetary 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 Respondent has failed to comply with the Contractor Registration or licensing provisions cited above, 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 (2016).

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 (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 Administrative 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: 5/14/18

KEN B. PETERSON  
Commissioner



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