

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Rene Ortiz, dba Anna's Painting

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry ("Commissioner") issues this Order against Rene Ortiz, dba Anna's Painting ("Respondent").

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 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 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby suspends the contractor registration of Respondent, No. IR726407, until such time that Respondent provides a complete and truthful response to the Commissioner's May 14, 2018 subpoena and pays the monetary penalty imposed above.

Pursuant to Minn. Stat. § 326B.082, subd. 12 (b) (2016), 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) (2016), the Commissioner also hereby orders Respondent to cease and desist from registering in the Registration Program under the business name Rene Ortiz, Anna's Painting, 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 May 8, 2015, Respondent registered the business name "Anna's Painting" as an assumed name with the Minnesota Secretary of State under file No. 825733500030. No Registered Address was included in the registration but the Principal Place of Business

was listed as 1380 Margaret Street, St. Paul, Minnesota. The assumed name registration is active and in good standing as of the date of this Licensing Order.

3. On June 21, 2017, Respondent registered in the Registration Program under his personal name only and was issued registration No. IR726407 with an address at 1380 Margaret Street, St. Paul, Minnesota.
4. This registration expired on December 31, 2017 due to nonrenewal.
5. On May 8, 2018, the Department opened an investigation of Respondent based on information indicating that Respondent may have engaged in violations of the Minnesota statutes governing the classification of workers in the construction industry.
6. On May 14, 2018, the Commissioner issued a Subpoena Duces Tecum to Respondent requesting information about his business structure, employees and subcontractors. Respondent's response to the subpoena was due on June 8, 2018.
7. The Department investigator sent the Subpoena Duces Tecum via first-class and certified mail to 1380 Margaret Street, St. Paul, Minnesota. The first-class mailing was not returned to the Department.
8. On May 19, 2018, the certified mailing was returned to the Department marked "RETURN TO SENDER – UNCLAIMED – UNABLE TO FORWARD" by the US Postal Service ("USPS").
9. On June 27, 2018, the Department investigator mailed a follow up letter with a copy of the subpoena enclosed to the same address via first-class and certified mail. Neither the first-class nor the certified mailing has been returned to the Department by the USPS as of the date of this Licensing Order.
10. As of the date of this Licensing Order, Respondent has not responded to the Subpoena Duces Tecum.

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) (2016).
2. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 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 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) (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.

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 or submitting a new application to the Registration Program until such time full compliance with the terms of this Licensing Order has been achieved.

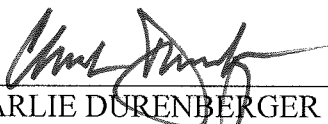
The monetary penalty assessed against the Respondent by this Licensing Order is due and payable on the date the Licensing Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (2016). When this Licensing Order becomes final, the Commissioner may file and enforce any unpaid portion of the penalty 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: 7/26/18

KEN B. PETERSON
Commissioner


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