

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Roofing Pro MN L.L.C.
and Ricardo Cortes Rosas, individually

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Roofing Pro MN L.L.C. and Ricardo Cortes Rosas, individually (“Respondents”).

Pursuant to Minn. Stat. § 326B.082, subd. 7 (2016) and Minn. Stat. § 326B.083 (2016), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$6,000, of which \$2,000 is forgivable if Respondents achieve compliance with the Contractor Registration requirements of Minn. Stat. § 326B.701 within 30 days of the date of this Order.

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 in the state of Minnesota as defined in Minn. Stat. § 181.723, subds. 1 and 2 (2018), until such time as the Respondents comply with all the terms of this Administrative Order, register with or secure a required license from the Minnesota Department of Labor and Industry (“Department”), and otherwise comply with the Minnesota statutes cited in the “Conclusions of Law” below.

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, Minn. Stat. §§ 181.723, subd. 4 (2016) and 326B.701, subd. 2 (2016) require all contractors who intend to provide commercial or residential building construction or improvement services in Minnesota to be registered with the Department’s Construction Contractor Registration Program (“Registration Program”) if they are not required to hold a license issued by the Department.
2. Respondent Roofing Pro MN L.L.C. was registered as a domestic limited liability company with the Minnesota Secretary of State (“MN SOS”) on March 23, 2017 with File No. 942206200029. In this business filing, Respondent Ricardo Cortes Rosas

("Respondent Rosas") is named as the Registered Agent with Registered Offices at 3005 Queen Avenue N., Minneapolis, Minnesota.

3. Payment records and invoices from 2016 and 2017 show that Respondents provided building construction or improvement services on behalf of KAT Construction LLC in Minnesota. Respondents are not now nor have they ever been registered with or licensed by the Department in any capacity.
4. The Department opened this investigation on June 8, 2018 based on documentation gathered in another investigation with respect to Respondents' recent building construction and improvement work in Minnesota.
5. A Department investigator mailed the subpoena via first-class and certified mail on June 15, 2018 to Respondent Roofing Pro's Registered Offices. The first-class mailing was not returned. The certified mailing was returned to the Department on July 10, 2018 marked "RETURN TO SENDER - VACANT - UNABLE TO FORWARD."
6. On July 19, 2018, a Department investigator sent a follow up letter requesting a subpoena response to Respondents via first-class and certified mail to the same address. The first-class mailing was not returned to the Department. The Department received the return receipt from the certified mailing signed by "J Santiago" as Respondents' agent, on July 21, 2018.
7. On September 11, 2018, the Department investigator received a phone call from an individual who identified himself as a friend of Respondent Rosas. The friend would not give his name but told the investigator that Respondent Rosas was incarcerated.
8. The Department investigator could not locate Respondent Rosas in the Minnesota Department of Corrections' offender lookup database, and records of the Minnesota Judicial Branch Criminal Case Records indicate that a warrant for Respondent Rosas's arrest was issued on September 7, 2018 as a result of his failure to appear at a hearing relating to a DWI case in Hennepin County.
9. As of the date of this Administrative Order, Respondents have not responded to the Subpoena Duces Tecum or the Department investigator's July 19, 2018 letter.

III. CONCLUSIONS OF LAW

1. Respondents committed violations of applicable law. Minn. Stat. § 326B.082, subd. 7 (2016).
2. Respondents provided building construction or improvement services on behalf of a person engaged in the business of building construction or improvement and was treated as an independent contractor despite not being registered in the Registration Program or licensed by the Department in violation of Minn. Stat. § 326B.701, subd. 5(b)(1) (2016).

3. 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.

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 (2016), Respondents shall have 30 days after issuance of this Administrative Order to request a hearing. In addition, if the Commissioner determines that Respondents have not corrected or taken appropriate steps toward correcting the violations within the 31-day period for corrective action, Respondents have 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. Respondents' review rights are more thoroughly described in Minn. Stat. § 326B.082, subs. 4 and 8 (2016).

If the 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 (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.

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 (2016).

The monetary penalty assessed upon Respondents by this Administrative Order is due and payable on the date the Administrative Order becomes final. *See* Minn. Stat. § 326B.083, subd. 3(a) (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), 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 (2016) will begin to accrue on the unpaid portion of the penalty.

Dated: 10/18/18

KEN B. PETERSON
Commissioner


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