

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of ONSUM ENTERPRISES, INC.
and Kenneth J. Onsum, individually

**ADMINISTRATIVE ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against ONSUM ENTERPRISES, INC. and Kenneth J. Onsum, individually (“Respondents”).

Pursuant to Minn. Stat. § 326B.082, subd. 7 (2018) and Minn. Stat. § 326B.083 (2018), the Commissioner hereby assesses against Respondents, jointly and severally, a monetary penalty of \$7,000 of which \$2,000 is forgivable. The forgivable portion of this penalty shall be forgiven if Respondents demonstrate to the Commissioner by the 31st day after this Administrative Order is issued that Respondents have corrected the violation. The required corrective action is described in the “Corrective Action” section of this Administrative 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 building construction or improvement services for which either a license or registration is required under the Minnesota Statutes until such time that Respondents successfully register with the Commissioner pursuant to Minn. Stat. § 326B.701 or obtain licensure from the Commissioner, as appropriate.

The Commissioner takes the above action based upon the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

1. Respondents’ business address is: 31604 Brightwood Shore Drive, Dent, Minnesota 56528.
2. Respondents do not and never have held a license issued by the Minnesota Department of Labor and Industry (“Department”), and Respondents are not and never have been registered in the Department’s independent construction contractor registration program (“Registration Program”).
3. On June 18, 2008, Respondent ONSUM ENTERPRISES, INC. registered as a foreign business corporation with the Minnesota Secretary of State (“MN SOS”) under file No.

2896618-2. This registration is inactive due to nonrenewal as of the date of this Administrative Order.

4. On October 25, 2018, Respondent Kenneth J. Onsum registered “onsum enterprises” as an assumed name with the MN SOS under file No. 1041236600021. The Nameholder of this filing is “ken j onsum.”
5. In 2017, Respondents performed building construction work on behalf of GRL Custom Homes LLC, a licensed residential building contractor in the state of Minnesota with license No. BC636832.
6. On July 24 2018, the Department opened an investigation of Respondents based on information indicating that Respondents may have engaged in violations of the Minnesota statutes governing the classification of workers in the construction industry.
7. On November 2, 2018, the Commissioner issued a Subpoena Duces Tecum to Respondents requesting information about business structure, employees and subcontractors. Respondents’ response to the subpoena was due on November 26, 2018.
8. The Department investigator sent the Subpoena Duces Tecum via first-class and certified mail to the Respondents’ business address.
9. With respect to the November 2 subpoena mailings sent to the, the first-class mailing was not returned to the Department by the US Postal Service (“USPS”). The certified mailing was returned to the Department by the USPS on November 23, 2018 marked “RETURN TO SENDER – UNCLAIMED – UNABLE TO FORWARWRD.”
10. On February 14, 2019, 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.
11. The first-class mailing was not returned to the Department by the USPS. The certified mail return receipt was returned to the Department by the USPS signed by Respondent Kenneth J. Onsum on February 16, 2019.
12. As of the date of this Administrative Order, Respondents have not responded to the Subpoena Duces Tecum.

III. CONCLUSIONS OF LAW

1. Respondents committed violations of applicable law. Minn. Stat. § 326B.082, subd. 7 (2018).
2. Respondents committed a violation of Minn. Stat. § 326B.082, subd. 2(b) (2018) by failing to respond to a written request for production of documents from the Commissioner.

3. Respondents performed building construction or improvement services in Minnesota despite not being licensed by the Department or registered in the Registration Program in violation of Minn. Stat. § 326B.701, subd. 2 (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, Respondents 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 actions are 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. In addition, if the Commissioner determines that Respondents have not corrected the violation 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. 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 Respondents submit 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 Respondents do 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 Respondents 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, Respondents are 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.

Furthermore, upon application of the Commissioner, a district court shall find as a contempt of court any failure of Respondents to correct the violation as required by this Administrative Order. Minn. Stat. § 326B.082, subd. 7(c) (2018). Failure to take the required corrective action may also result in additional enforcement action under Minn. Stat. § 326B.082 (2018).

Dated: 3/4/19

NANCY J. LEPPINK
Commissioner


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