

REG1809-00004/MG

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of the Contractor Registration of
James McGraw, dba McGraw Construction

**LICENSING ORDER
WITH PENALTY**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against James McGraw, dba McGraw Construction (“Respondent”).

Pursuant to Minn. Stat. § 326B.082, subds. 11(b) and 12 (2018) and Minn. Stat. § 326B.083 (2018), the Commissioner hereby suspends the Contractor Registration of Respondent, No. IR720877, until such time that Respondent provides a complete answer to the Commissioner’s September 18, 2018 subpoena and pays the monetary penalty imposed herein.

Pursuant to Minn. Stat. § 326B.082, subd. 12(b) (2018), the Commissioner also hereby orders Respondent, during the period of 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 Construction Contractor Registration Program (“Registration Program”) is required.

Pursuant to Minn. Stat. § 326B.082, subd. 11(a)(b)(5) (2018), the Commissioner also hereby orders Respondent to cease and desist from registering in the Registration Program under the business name McGraw Construction or any other business name.

Pursuant to Minn. Stat. §§ 326B.701, subd. 6; 326B.082, subd. 12 (b); and 326B.083 (2018), the Commissioner hereby assesses against Respondent a monetary penalty of \$5,000.

The Commissioner takes the above action based upon the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

1. Respondent holds a contractor registration issued by the Commissioner, registration No. IR720877, on March 2, 2017. When he registered, McGraw disclosed his business address as 3744 155th St. W., Rosemount, MN.

2. Respondent registered the name “McGraw Construction” as an assumed name with the Minnesota Secretary of State on January 27, 2016 and this filing is active through December 31, 2019. In this filing, Respondent listed his registered office address as: 3744 155th St. W, Rosemount, MN.
3. Respondent, as a registered contractor, must adhere to the Minnesota statutes and regulations governing contractor registration and worker classification, Minn. Stat. §§ 181.723, 326B.701, and 326B.081 to 326B.085 (2018) and Minn. R. Chapter 5224 (2017).
4. On September 5, 2018, the Minnesota Department of Labor and Industry (“Department”) opened an investigation of Respondent based on information that indicated that Respondent may have engaged in violations of the statutes and rules governing the classification of workers in the construction industry.
5. On September 19, 2018, a Department investigator sent Respondent a subpoena duces tecum requiring the production of records and other information relating to Respondent’s contractors, subcontractors and employees. The subpoena required a response within 20 days and was mailed via first-class and certified mail to the Rosemount address disclosed in Respondent’s contractor registration and his business filing with the Secretary of State.
6. On October 3, 2018, Respondent signed the certified mail return receipt acknowledging receipt of the subpoena. The subpoena sent via first-class mail was not returned to the Department by the USPS.
7. On December 27, 2018, the Department investigator sent Respondent a letter requiring Respondent to provide a response to the subpoena.
8. As of the date of this Order, Respondent has failed to provide a response to the subpoena.

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) (2018).
2. Respondent failed to comply with a subpoena issued by the Commissioner. Minn. Stat. §§ 326B.082, subd. 2(b) and 326B.082, subd. 11(b)(6) (2018).

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), Respondent shall have 30 days after issuance of this 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. 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 Respondent submits 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.

VI. EFFECT OF FINAL ORDER

If Respondent does 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. *See* Minn. Stat. § 326B.082, subd. 12(c) (2018).


Respondent is prohibited from applying for reinstatement of his contractor registration until such time full compliance with the terms of this Licensing Order has been achieved. Reinstatement after suspension requires: application to the Commissioner no later than two years after completion of the suspension period; submission of a completed registration renewal if the registration expired during the registration suspension; and the meeting of all other requirements for registration. Minn. Stat. § 326B.096, subd. 2 (2018).

The monetary penalty assessed by this order is due and payable on the date this order becomes final. Minn. Stat. § 326B.083, subd. 3(a) (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, Respondent is 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.

Dated: 3/19/19

NANCY J. LEPPINK
Commissioner


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