

STATE OF MINNESOTA
Department of Labor and Industry

In the Matter of Troy Olson Construction LLC
and Troy Olson, individually

**ADMINISTRATIVE ORDER
WITH PENALTY PURSUANT
TO MINN. STAT. § 326B.701**

I. ORDER

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) issues this Order against Respondents Troy Olson Construction LLC and Troy Olson, individually, pursuant to Minn. Stat. §§ 326B.082, subd. 6 (2018).

Pursuant to Minn. Stat. §§ 181.723 (2018); 326B.082, subd. 7 (2018); and 326B.083 (2018), the Commissioner hereby assesses against Respondents, jointly and severable, a monetary penalty of \$7,000, \$2,000 of which shall be forgiven if Respondents demonstrates to the Commissioner by the 31st day after this Administrative Order is issued that Respondents have corrected the violation(s) identified below. 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 public or private sector commercial or residential building construction or improvement services for which registration in the Registration Program is required. The cease and desist order remains in effect until the monetary penalty assessed herein is paid, a complete response to the Commissioner’s April 6, 2018 subpoena is submitted, and compliance with the registration requirements of Minn. Stat. § 326B.701, subd. 2 (2018) is achieved.

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

II. FINDINGS OF FACT

1. Respondents are engaged in the business of providing building construction or improvement services, but are not currently licensed by the Minnesota Department of Labor and Industry (“Department”) and are not currently registered with the Registration Program.
2. According to the business records of Dave Schultz Construction, Inc., Respondents were paid for the performance of building construction services in Minnesota in October and

November 2017. The Respondents' address was listed as 34315 Malmberg Avenue, Lindstrom, MN.

3. According to the records of the Minnesota Secretary of State, Troy Olson Construction LLC was registered as a limited liability company from 2009 through 2012, at that time, it had a Registered Office Address of 34315 Malmberg Avenue, Lindstrom, MN and the company's manager was Troy Olson. The business registration is currently inactive.
4. According to the records of the Minnesota Workers Compensation Insurers Association, Troy Olson Construction LLC carried a Workers Compensation Policy in 2017. Its address was 34315 Malmberg Avenue, Lindstrom, MN and the 100% owner was listed as Troy Olson. The policy is currently expired.
5. On January 31, 2019, the Department opened an investigation of Respondents based on information that indicated that Respondents may have engaged in violations of the Minnesota statutes and rules governing worker classification in the construction industry.
6. On February 7, 2019, a Department investigator mailed a subpoena duces tecum via first-class and certified mail to Respondents at their Registered Office Address in Lindstrom. The subpoena required the production of documentation relating to Respondents' subcontractors, contractors, and employees and requested that the Respondents register with the Registration Program.
7. The subpoena sent via certified mail was returned by the United States Postal Service ("USPS") marked "Unclaimed." The subpoena sent via first-class mail was not returned to the Department by the USPS.
8. On March 7, 2019, the Department investigator mailed a second request for information and registration to Respondents at their Registered Office Address in Lindstrom. This letter was not returned to the Department by the USPS.
9. Both the subpoena and supplemental request for information required a response from Respondent within 30 days of the Commissioner's service of the same.
10. Respondents have not registered in the Registration Program as of the date of this Order.
11. The Commissioner has received no response to the February 7, 2019 subpoena from Respondents as of the date of this Order.

III. CONCLUSIONS OF LAW

1. Respondents committed violations of applicable law. Minn. Stat. §§ 181.723, 326B.082 and 326B.701 (2018).
2. Respondents failed to comply with a subpoena issued by the Commissioner. Minn. Stat. § 326B.082, subd. 11 (b) (6) (2018).
3. Respondents performed building construction or improvement services in Minnesota without first obtaining a license from the Department or registering with the Registration Program. Minn. Stat. § 326B.701, subsd. 2 and 5(b) (1) (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.

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 violations specified above have been corrected as specified below.

Failure to demonstrate to the satisfaction of the Commissioner that the violations have 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 violations were 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 violations were 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:

1. Registration in the Registration Program pursuant to Minn. Stat. § 326B.701, subd. 2 (2018).
2. Provision of a complete and truthful response to the Commissioner’s February 7, 2019 subpoena, Minn. Stat. § 326B.082, subd. 2 (2018).

VI. REQUEST FOR HEARING

Pursuant to Minn. Stat. § 326B.082, subd. 8 (2018), Respondents shall have 30 days after issuance of this 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. 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 and a correction plan acceptable to the Commissioner was not developed within the 31-day period, 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.

Dated: 4/23/19

NANCY J. LEPPINK
Commissioner


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