CAH 65-1902-40022

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order Issued to Mat's Electric, LLC and Mathew A. Roberts	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Ann C. O'Reilly on March 19, 2025, for an evidentiary hearing at the Clay County Courthouse in Moorhead, Minnesota. The record closed on June 16, 2025, following the filing of written closing arguments.

Richard Dornfeld, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry (Department). Mathew Roberts (Roberts), owner of Mat's Electric, LLC (Mat's Electric) (collectively referred to herein as Respondents), appeared on behalf of himself and his company, and without legal counsel.

STATEMENT OF THE ISSUES

1. Did Respondents fail to perform electrical work in compliance with the National Electric Code (the Code)[1] or make corrections ordered by the Department, in violation of Minn. Stat. §§ 326B.35 and .36, subds. 1 and 4 (2024)?

2. Did Respondents demonstrate incompetence, untrustworthiness, or financial irresponsibility by repeatedly failing to perform Code-compliant electrical work, failing to make corrections ordered by the Department, or misrepresenting that Respondents made the required corrections, in violation of Minn. Stat. § 326B.082, subd. 11(b)(9) (2022)[2]?

3. Did Respondents fail to maintain an electrical surety bond, in violation of Minn. Stat. § 326B.33, subd. 15 (2024)?

4. Did Respondents fail to maintain an active certificate of good standing with the Minnesota Secretary of State and keep current the required information for

[1] The 2020 Code was the most recent edition available at the time relevant to this matter and, therefore, all Code provisions cited and discussed in this report will refer to the 2020 Code. *See generally* Minn. Stat. § 326B.35 (2020).
[2] In 2024, the Minnesota legislature renumbered this statutory provision to Minn. Stat. § 326B.082, subd. 11(b)(10). *See* 2024 Minn. Laws ch. 127, art. 10, § 22, at 115.

maintaining an electrical contractor license, in violation of Minn. R. 3800.3530, subps. 1(D) and 4 (2025)?

SUMMARY OF RECOMMENDATION

The Department has failed to prove by a preponderance of the evidence that Respondents failed to perform electrical work in compliance with the Code or make corrections ordered by the Department in violation of Minn. Stat. §§ 326B.35 and .36, subds. 1 and 4. Therefore, the Department has not proven that Respondents demonstrated incompetence, untrustworthiness, or financial irresponsibility in violation of Minn. Stat. § 326B.082, subd. 11(b)(9) (2022). However, the evidence establishes that Respondents failed to maintain an electrical surety bond in violation of Minn. Stat. § 326B.33, subd. 15 (2024) and failed to maintain an active business registration with the Minnesota Secretary of State in violation of Minn. R. 3800.3530, subps. 1(D) and 4. Accordingly, the Administrative Law Judge recommends the Commissioner **AFFIRM IN PART** and **RESCIND IN PART** the Licensing Order with Penalty issued to Respondents on February 16, 2024.

Based upon a preponderance of the evidence in the hearing record, the Judge makes the following:

FINDINGS OF FACT

1. Mathew Roberts is the sole owner of, and responsible individual for, Mat's Electric, LLC.[3] Mat's Electric is a licensed electrical contractor, and Roberts is a licensed master electrician in the State of Minnesota.[4] Roberts received his master electrician license in approximately 2017, and Mat's Electric has held an electrical contractor license since 2018.[5] Before earning his master electrician status, Roberts previously held a journeyman license.[6]

2. Respondents have never been subject to disciplinary action by the Department or the subject of any prior licensing orders.[7]

3. An electrical contractor must obtain a permit from the Department before performing most electrical work.[8] The permit includes a description of the work to be performed and where the work will be done.[9] The contractor must also calculate and pay the corresponding fees for the project, which is dependent upon the scope of the work to be performed.[10]

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[3] Testimony (Test.) of Mathew Roberts.
[4] Test. of Chris Williams; Exhibits (Exs.) 1, 2.
[5] Test. of M. Roberts.
[6] Test. of M. Roberts.
[7] Test. of M. Roberts.
[8] Test. of C. Williams.
[9] Test. of C. Williams.
[10] Test. of C. Williams.

4. The Department's permit system is automated, and permits are issued automatically after submission of the application unless there is an issue with the contractor's license.[11] Permits are valid for 12 months after issuance.[12]

5. Once a permit is issued, the contractor must contact the assigned inspector for an inspection.[13] Electrical work must comply with the Code in order to pass inspection.[14] Supplemental inspections are made while work is still ongoing as a progress check.[15] Final inspections are made at the end of work and must be passed in order for the permit to be closed.[16] If, during a final inspection, an inspector finds that corrections are needed, the contractor must make the required corrections within 14 days and schedule a follow-up inspection before the permit can be closed.[17]

2021 Application for a House Permit

6. On October 8, 2021, Roberts applied for an electrical permit (House Permit) to complete a "[n]ew 200 amp service to [a] mobile home" at a property in Lee Township owned by Mike Doughty (Doughty Property).[18] Roberts was hired by Doughty to install a 200 amp power source to Doughty's new mobile home and no other electrical work at that time.[19]

7. Fees for an electrical permit for work on one- or two-family homes are contained in the Department's Contractor Inspection Fee Worksheet (the Worksheet).[20] Permit fees are dependent upon: (1) the type of power source to be installed; (2) the number of circuits or feeders installed or extended as part of the project; (3) special (miscellaneous) inspection fees that may be required for a project; and (4) a mandatory $1 surcharge.[21] The fees are autogenerated by the Department's iMS license management system, a computerized database, based upon the inputs made by the contractor on the Worksheet.[22]

8. The Worksheet has sections and lines that must be filled in by the contractor when submitting the permit application.[23] The first section of fees relates to the power

[11] Test. of C. Williams.
[12] Test. of C. Williams.
[13] Test. of C. Williams.
[14] Test. of C. Williams.
[15] Test. of C. Williams; Test. of Jason Ekholm.
[16] Test. of C. Williams; Test. of J. Ekholm.
[17] Test. of J. Ekholm; Test. of C. Williams.
[18] Ex. 4.
[19] Test. of M. Roberts.
[20] Ex. 18; Test. of J, Ekholm.
[21] Ex. 18; Test. of J, Ekholm.
[22] Test. of C. Williams; Test. of J. Ekholm.
[23] Ex. 18; Test. of C. Williams.

source to be installed and the power source's ampere (amp) capacity.[24] Power sources are grouped into three categories: 0 to 400 amp; 401 to 800 amp; and over 800 amp sources.[25] Each group has a different fee, with 0 to 400 amp sources being $35 per power source.[26]

9. Next, the Worksheet requires the contractor to calculate the number of circuits and/or feeders that will be installed in the home.[27] If the project involves installing "less than 15 or more than 30 feeders or circuits", the fee is $6 per feeder or circuit.[28] This requires the contractor to count up the number of feeders or circuits that the contractor will install and multiply that number by $6.[29] If, however, the project involves the installation of "15 or 30 feeders or circuits," the fee is a flat $100.[30]

10. Finally, the Worksheet adds a fee for any special inspections required and a mandatory $1 permit surcharge on all permit applications.[31]

11. Pursuant to the Worksheet, the fees for a 200 amp service to a new mobile home would be: $35 dollars for a 200 amp power source, $6 for a single feeder or circuit, and $1 for a required surcharge, for a total of $42.[32]

12. When Roberts submitted the House Permit, he remitted $136 in permit fees.[33] Based upon the Worksheet, this amount is consistent with adding: a $35 fee for a 200 amp source; the flat fee of $100 for "15 or more feeders or circuits"; and the $1 surcharge.[34] Consequently, Roberts paid $94 more for the House Permit than would be required based upon the description of work contained in the permit application.[35] Roberts does not know why he used the flat $100 circuit fee as opposed to the $6 fee for just one circuit.[36]

13. After submitting the permit application and paying the $136 permit fee, Roberts completed the installation of the 200 amp service to the Doughty mobile home.[37] At that time (approximately October 8, 2021), Roberts only installed the 200 amp power

[24] Ex. 18.
[25] Ex. 18.
[26] Ex. 18.
[27] Ex. 18.
[28] Ex. 18.
[29] Ex. 18.
[30] Ex. 18. Because special inspection fees do not apply to this case, this section is omitted from the explanation.
[31] Ex. 18.
[32] Ex. 18; Test. of J. Ekholm. Because the installation of a 200 amp power source does not require any special inspections, no fees would be added for miscellaneous inspections.
[33] Ex. 4.
[34] Ex. 18; Test. of J. Ekholm.
[35] Test. of J. Ekholm.
[36] Test. of M. Roberts.
[37] Test. of M. Roberts.

source to the mobile home and performed no other electrical hookups, consistent with Roberts' agreement with the homeowner, Doughty, and the scope of work contained in the permit application.[38]

AC Unit and Septic System Installation

14. Prior to Roberts installing the 200 amp source on the Doughty mobile home, Doughty had an air conditioning (AC) unit installed in the mobile home and a full septic system installed on the property to service the home.[39]

15. Doughty hired Clark's Excavating and Septic Pumping (Clark's) to install the septic system.[40] The record is silent as to who installed the AC unit in the home.

16. Because Roberts was not hired by Doughty to connect the AC unit or septic system to the home, Roberts did not perform any of those hookups or work.[41]

Inspection of House Permit

17. On October 12, 2021, Jason Ekholm, a field electrical inspector for the Department, was dispatched to the Doughty Property to perform an inspection of the work performed by Roberts pursuant to the Home Permit.[42]

18. Ekholm inspected the 200 amp service to the new mobile home that Roberts installed on the Doughty Property.[43] Ekholm did not find any Code violations related to the 200 amp service.[44]

19. Instead of concluding his inspection, however, Ekholm continued to look for additional electrical work at the Doughty Property due to the permit fees paid by Roberts.[45] Because Roberts paid almost $100 more in fees than what was required for a single 200 amp power source hookup, Ekholm assumed that Roberts performed more work than the 200 amp service described in the House Permit.[46] Ekholm assumed that Respondents must have connected several feeders or circuits in the home, in addition to the 200 amp installation.[47]

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[38] Test. of M. Roberts.
[39] Test. of M. Roberts; Ex. 13.
[40] Test. of M. Roberts (referring to "Clark's" as the septic installer).
[41] Test. of M. Roberts.
[42] Test. of J. Ekholm.
[43] Test. of J. Ekholm; Ex. 5.
[44] Test. of J. Ekholm; Ex. 5.
[45] Test. of J. Ekholm.
[46] Test. of J. Ekholm.
[47] Test. of J. Ekholm.

20. Ekholm did not contact Roberts to clarify the scope of Roberts's work or the discrepancy between the project description in the House Permit and the amount of permit fees paid.[48] Similarly, Roberts did not contact Ekholm prior to the inspection to clarify the scope of his work on the property.[49]

21. During his inspection, Ekholm found that the newly installed AC unit and septic system were not yet connected to the mobile home.[50] Given the $136 permit fee paid by Roberts with the permit application, Ekholm assumed that Roberts must have been responsible for hooking up the AC unit and septic system to the home as part of Roberts's contract with Doughty.[51] Thus, while the 200 amp service was "passed" as fully complying with Code requirements, Ekholm deemed his inspection a "supplemental inspection" and issued an inspection report result of "pass with conditions."[52] In his report, Ekholm simply wrote: "unfinished wiring of the A/C unit" and "unfinished wiring of the septic."[53]

22. After receiving Ekholm's inspection report, Roberts did not call Ekholm to explain that he was not hired to connect the AC unit or the septic system to the home, and that such work was outside the scope of his permit application.[54] Instead, Roberts went back to the Doughty Property and: (1) connected the AC unit to the electrical panel inside the mobile home; and (2) "tied in" the cable that the septic system contractor had left unconnected to the home's main power source by "fishing" it through the wall and connecting it to the home's electrical panel.[55] Clark's, the septic system contractor, had left the electrical cables to the septic system tied under the mobile home, but did not connect the cables to the home's main electrical panel inside the home.[56]

23. Roberts apparently did not notice that Ekholm's inspection report showed that it was a supplemental inspection, as opposed to a final inspection, even though Ekholm's inspection report stated that the permit "pass[ed] with conditions."[57] Therefore, to close the permit, Roberts would need to request another, final inspection to obtain final approval.[58]

Supplemental vs. Final Inspections and Reports

24. A field inspector determines, based upon the type and scope of the work in the permit and the permit fees paid, whether an inspection is a "final inspection" or a

[48] Test. of J. Ekholm; Test. of M. Roberts.
[49] Test. of M. Roberts.
[50] Test. of J. Ekholm.
[51] Test. of J. Ekholm; Ex. 5.
[52] Test. of J. Ekholm; Ex. 5.
[53] Ex. 5.
[54] Test. of M. Roberts.
[55] Test. of M. Roberts; Exs. 7; 129.
[56] Test. of M. Roberts.
[57] Ex. 5.
[58] Test. of J. Ekholm.

"supplemental inspection."[59] The inspector can issue a final inspection report even if the inspector is requiring additional work or corrections by the contractor before final approval.[60] When this happens, the inspector issues a final inspection report and notes the additional work that must to be done for the permit to be closed.[61] In that case, the inspector advises the contractor that it has 14 days to complete the additional work and request reinspection.[62]

25. In contrast, if an inspector determines that additional work is required before final approval can be given, the inspector may deem the inspection a supplemental inspection which does not set a deadline for the contractor to perform the additional work or corrections.[63] In that case, it is up to the contractor to request another, final inspection for the work to be approved prior to the expiration of the permit.[64] The permit expires one year from its issuance date.[65] Thus, if a final inspection is not performed within that year period, a new permit will be required for the work to become approved.[66]

26. After connecting the AC unit and the septic system to the electrical panel inside the home, Roberts did not call Ekholm for a final inspection.[67] Instead, Roberts believed he had completed the permit process.[68] However, because Ekholm deemed his inspection a supplemental inspection, as opposed to a final inspection, the House Permit remained open.[69]

27. When a contractor applies for a permit and pays the permit fees, the permit is automatically issued by the Department and transmitted to the assigned inspector's "dashboard" on the iMS database for inspection.[70] The contractor or homeowner is responsible for contacting the Department to request an inspection.[71] The permit remains on the inspector's iMS dashboard until a final inspection is performed and the permit is closed or expires.[72]

28. Ekholm changed positions with the Department on September 13, 2022, approximately one month before the Home Permit was set to expire.[73] In his new position, Ekholm went "in house" with the Department to conduct virtual inspections and was no

[59] Test. of J. Ekholm.
[60] Test. of J. Ekholm.
[61] Test. of J. Ekholm.
[62] Test. of J. Ekholm.
[63] Test. of J. Ekholm.
[64] Test. of J. Ekholm.
[65] Test. of J. Ekholm.
[66] Test. of J. Ekholm.
[67] Test. of M. Roberts; Test. of J. Ekholm.
[68] Test. of M. Roberts.
[69] Test. of M. Roberts; Test. of J. Ekholm; Ex. 7.
[70] Test. of C. Williams.
[71] Test. of J. Ekholm.
[72] Test. of C. Williams.
[73] Test. of J. Ekholm.

longer responsible for field inspections.[74] Therefore, closing the House Permit was no longer something he would be tracking.[75]

Installation of the Septic System on the Doughty Property

29. Roberts did not install the septic system on the Doughty Property.[76] This work was performed by Clark's Excavating and Septic Pumping.[77]

30. When a septic system is installed on a property to collect sewage from a dwelling, it must first be connected to an outside power source to control the septic pump and then be connected to the electrical panel inside the home.[78]

31. When Clark's installed the septic system on the Doughty Property, it ran a cable from the septic system to the house, but did not connect the septic system cable to the electrical box inside the home.[79] In other words, there was an electrical cable from the septic system to the home, which ran above ground under the mobile home chassis, but the cable was left unconnected to home's internal electrical box.[80] In addition, the septic electrical supply cable that ran under the home was not encased in a protective "raceway" or conduit to protect it from rodents or other elements on the ground.[81] A picture of the unprotected septic wires (in white) is shown below:[82]

[74] Test. of J. Ekholm.
[75] Test. of J. Ekholm; Test. of C. Williams.
[76] Test. of M. Roberts; Ex. 7.
[77] Test. of M. Roberts (referring to "Clark's" as the septic installer).
[78] *See* Test. of M. Roberts.
[79] Test. of M. Roberts.
[80] Test. of M. Roberts; Test. of J. Ekholm.
[81] Test. of J. Ekholm.
[82] Ex. 19 at DLI000116.

32. Because Roberts did not install the septic system, including the white cables that ran under the mobile home, Roberts did not modify the under-chassis cables in any way.[83] Instead, Roberts relied upon Ekholm's supplemental inspection report and "fished" the septic system cabled up through a wall of the mobile home and connected it to the electrical panel inside the home.[84] Roberts encased only the portion of the cable that he worked on – not the portion of the cable that ran underneath the home.[85]

33. In addition to connecting the septic system to the home's interior electrical panel, a septic system's pump and pump float switch must be connected to an exterior electrical source.[86] For the Doughty Property, the outside electrical box and post, to which the septic system was connected, looked like this:[87]

[83] Test. of M. Roberts.
[84] Test. of M. Roberts.
[85] Test. of M. Roberts. There is no allegation that the portion of the septic cable fished up through the wall by Roberts was without necessary casing.
[86] Test. of M. Roberts; Test. of J. Ekholm; Ex. 19 at DLI000113.
[87] Ex. 19 at DLI000113.

34. The black flexible cables coming out of the septic system attach to the power source inside the electrical box, which is installed on a post on the property.[88] The black cables, as well as the exterior electrical box and post, were installed by Clark's, not Respondents.[89] Because Respondents did not install the septic system, Roberts did not alter the cables connecting the septic system to the exterior electrical box and post.[90]

35. The black cables connecting the septic system to the outside power source were not encased in a protective cover and could potentially be subject to physical damage from lawn maintenance equipment.[91]

Garage Permit

36. On September 30, 2022, Roberts took out an electrical permit (Garage Permit) to complete a "100 amp underground service to new detached garage" at the Doughty Property.[92] Doughty hired Respondents to bring electricity from the outside

[88] Test. of J. Ekholm; Test. of M. Roberts.
[89] Test. of M. Roberts.
[90] Test. of M. Roberts.
[91] Test. of Adam Sorensen.
[92] Ex. 6.

electrical meter to the garage.[93] Doughty pulled a separate permit to perform the interior wiring of the garage himself.[94]

37. Pursuant to the Worksheet, the required fees for a 100 amp service to a detached garage are $35 for the 100 amp power source, $6 for a feeder or circuit from the power source to the garage, and $1 for a required surcharge, for a total of $42.[95] Roberts only paid $36 in fees for the Garage Permit, underpaying by $6.[96] Roberts did not include the $6 fee required for connecting a circuit or feeder to a structure.[97]

38. When connecting the outside power to the garage, Roberts used schedule 40 PVC pipe to enclose the electrical cables that come up from the ground and connect to the service box attached to the back of the garage.[98] Photographs of the electrical box and PVC encasement installed by Roberts appear below:[99]

[93] Test. of M. Roberts.
[94] Test. of Adam Sorensen.
[95] Test. of A. Sorensen; Ex. 18.
[96] Test. of A. Sorensen; Ex. 6.
[97] Test. of A. Sorensen; Ex. 6.
[98] Test. of A. Sorensen; Test. of M. Roberts; Ex. 19 at DLI000111-12.
[99] Ex. 19 at DLI000111.

39. A closer picture of the PVC encasement appears as follows:[100]

40. Schedule 40 PVC is weaker and less thick than schedule 80 PVC and more likely to break if struck by lawn maintenance equipment, such as a weed whacker or lawn mower.[101]

41. The PVC conduit is attached to the back side of the detached garage.[102] The back and side of the garage are separated from large grassy areas by a strip of dirt and rocks that appears to be several inches to possibly a foot wide.[103] Roberts chose not to use schedule 80 PVC for the conduit because there was no grass around the conduit at the time he installed it, and the conduit was on the rear side of the garage so it was not

[100] Ex. 19 at DLI000112.
[101] Test. of A. Sorensen.
[102] Ex. 19 at DLI000111.
[103] Ex. 19 at DLI000111-12.

exposed to vehicles.[104] There is no evidence in the record that lawn equipment is used in the immediate area around the PVC conduit or that the PCV conduit is subject to physical damage.

42. The cables and circuit breaker Roberts installed inside the electrical box looked like this:[105]

43. Roberts did not call for a final inspection of his work on the garage, and the Garage Permit expired on September 30, 2023.[106]

[104] Test. of M. Roberts.
[105] Ex. 19 at DLI000114.
[106] Test. of A. Sorensen; Ex. 6.

Follow-up Inspection of House Permit

44. On September 12, 2023, Adam Sorensen, a field electrical inspector for the Department, sent a text message to Roberts inquiring about the status of the House Permit because it was two years old and was still "open."[107]

45. Roberts responded that he would need to look it up because it had been "a couple years" since Roberts had done any work for Doughty.[108] Roberts did not immediately follow up with Sorensen.[109]

46. On October 17, 2023, Sorensen sent another text message to Roberts asking, "Did you get a change to look up this permit? On the report it said there was unfinished wiring of the ac and septic."[110]

47. Roberts responded: "Yes, I finished that stuff the same week, I believe. Must have forgot to call it in?"[111]

48. The following day, Sorensen asked Roberts if he would need to access the inside of the mobile home to inspect the finished wiring.[112] Roberts replied that the "only thing inside would be cable fished up in to the panel for AC[,] and the breaker of course. I believe all the septic wiring was already in place[.] I just had to tie it in to [sic] the cable that Clark [the septic system installer] left behind."[113]

49. Sorensen agreed to arrange an inspection with Doughty the next week.[114]

50. At some point in his investigation, Sorensen sent a text message to Doughty to inquire as to what work Roberts performed on the septic system.[115] Doughty responded that: "[f]or the septic system, the outside box was in place by the septic guy, but the wire was not connected inside."[116]

Sorensen Inspections of Home and Garage

51. On October 25, 2023, Sorensen conducted a final inspection of the Home Permit and the Garage Permit for the Doughty Property.[117]

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[107] Ex. 7; Test. of A. Sorensen. Sorensen was apparently taking over for Ekholm in the Moorhead area and following up on open permits.
[108] Ex. 7; Test. of A. Sorensen.
[109] Ex. 7; Test. of A. Sorensen.
[110] Ex. 7; Test. of A. Sorensen.
[111] Ex. 7; Test. of A. Sorensen.
[112] Ex. 7; Test. of A. Sorensen.
[113] Ex. 7; Test. of A. Sorensen.
[114] Ex. 7; Test. of A. Sorensen.
[115] Ex. 13; Test. of A. Sorensen.
[116] Ex. 13.
[117] Test. of A. Sorensen; Exs. 8, 9.

52. In his final inspection report for the Home Permit, Sorensen noted three issues that required correction:[118]

(1) The feeder cable installed under the mobile home should be installed into a raceway to protect the cable from damage and rodents pursuant to section 550.15(H)(2) of the Code.

(2) The cords for the septic system pump (between the underground septic system and the outside post and box) should be sleeved to protect them from damage pursuant to section 400.12(7) of the Code.

(3) The signal cable for the septic system alarm should not enter the panelboard enclosure pursuant to section 725.136 of the Code.

53. In his final inspection report for the Garage Permit, Sorensen noted four issues that required corrections:[119]

(1) #2 aluminum wire is not sufficient for a 100-amp service pursuant to section 310.15 of the Code.

(2) A barrier should be placed in service equipment so that no uninsulated, ungrounded service busbar or service terminal is exposed to inadvertent contact by persons or maintenance equipment pursuant to section 230.62(C) of the Code.

(3) PVC conduit emerging from the ground at the back of the garage is subject to damage and should be schedule 80 pursuant to section 300.5(D)(4) of the Code.

(4) The ground electrode conductor (GEC) should be buried to protect it from damage pursuant to section 250.61 of the Code.

54. With respect to the second issue cited for the Garage Permit (Code section 230.62(C)), Sorensen observed that the service terminal did not have any barrier preventing direct contact, which presented safety risks of fire or electrocution because the service terminal is energized directly from the utility meter and may remain live even when the panel is switched off.[120] Put simply, there was no grounding material surrounding the circuit breaker switch and the screws holding that switch into the electrical box, such that a person could come into contact with the screws that are not grounded.[121]

[118] Ex. 8; Test. of A. Sorensen.
[119] Ex. 9; Test. of A. Sorensen.
[120] Test. of A. Sorensen.
[121] Test. of A. Sorensen.

In Sorensen's opinion, rubber circuit breaker screw covers (a "boot kit") would best remedy the issue.[122]

55. Sorensen classified both the Home Permit and Garage Permit inspections as final inspections and specifically advised Roberts: "Contact inspector for reinspection when complete. Corrections to be made within 14 days."[123]

56. On November 8, 2023, Sorensen texted Roberts.[124] Sorensen asked Roberts when he would have the corrections done on the Doughty Property.[125] Sorensen advised that the "14 days to do corrections is up today" and that the text would be Roberts' only notice before Sorensen would send the case to the Department for enforcement.[126]

57. Roberts responded that the corrections would be made by the end of the following week.[127]

Corrections Performed by Roberts

58. Roberts returned to the Doughty Property and completed some, but not all, corrections.[128]

59. With respect to the Garage Permit issues, Roberts installed a small plastic barrier in the junction box of the garage between the circuit breaker and the metal box.[129] Roberts found a piece of plastic in his truck that fit over the service terminals and taped the plastic into the service box.[130] Roberts believed that the plastic piece would be sufficient under the Code to ground or insulate the circuit breaker should a person come into contact with that area.[131]

60. Roberts did not change the PVC covering over the underground electrical cords servicing the detached garage because Roberts believed the schedule 40 PVC that he used was sufficient to meet the Code requirements.[132] Specifically, Roberts determined that, because there was no grass around the conduit and the conduit was not exposed to lawn equipment or other vehicles that could damage the pipe, the schedule 40 PVC met Code standards.[133]

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[122] Test. of A. Sorensen; Ex. 113.
[123] Test. of A. Sorensen; Exs. 8 9.
[124] Ex. 7; Test. of A. Sorensen.
[125] Ex. 7; Test. of A. Sorensen.
[126] Ex. 7; Test. of A. Sorensen.
[127] Ex. 7.
[128] Test. of M. Roberts; Test. of A. Sorensen.
[129] Test. of M. Roberts.
[130] Test. of M. Roberts.
[131] Test. of M. Roberts.
[132] Test. of M. Roberts.
[133] Test. of M. Roberts.

61. With respect to the mobile home, Roberts did not install a raceway or sleeve the feeder cables under the mobile home because he did not install those cables; Clark's, the septic system contractor, placed those cables under the chassis of the home.[134] Roberts also did not sleeve the black flexible cords that connected the septic system pump to the outside post/electrical box because Clark's, the septic system contractor, installed those cords and connected the septic system to that outside power source.[135] Because that electrical work was not performed by Roberts, Roberts did not alter the cables.[136]

62. Roberts did not communicate with Sorensen to explain why he did not make some of the corrections Sorensen directed on the October 25, 2023, inspection reports, or why he believed his work met Code requirements.[137]

Sorensen Reinspection

63. On November 11, 2023, Sorensen reinspected the mobile home and garage on the Doughty Property.[138] Sorensen noted a total of four outstanding issues remaining at the Doughty Property – two for the garage and two for the mobile home.[139] These four alleged violations are at issue in this case:

(1) The feeder cord installed under the mobile home for the septic system should be installed into a raceway to protect the cable from damage and rodents pursuant to section 550.15(H)(2) of the Code.[140]

(2) The cords for the septic system (between the underground septic system and an outside post and box) should be sleeved to protect them from damage pursuant to section 400.12(7) of the Code.

(3) A barrier should be placed in service equipment so that no uninsulated, ungrounded service busbar or service terminal is exposed to inadvertent contact by persons or maintenance equipment pursuant to section 230.62(C) of the Code.

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[134] Test. of M. Roberts.
[135] Test. of M. Roberts.
[136] Test. of M. Roberts.
[137] Test. of M. Roberts; Test. of A. Sorensen.
[138] Exs. 10, 11; Test. of A. Sorensen.
[139] Ex. 10.
[140] Ex. 10. Sorensen also included a violation of section 314.23 of the Code for the cables under the mobile home, noting that the junction box for the septic wiring should be securely mounted and grounded. The Department withdrew this alleged Code violation at the hearing and, therefore, it is no longer at issue. Hearing Digital Recording (Mar. 19, 2025) (on file with the Minn. Court Admin. Hearings).

(4) PVC conduit emerging from the ground at the back of the garage is subject to damage and should be schedule 80 pursuant to section 300.5(D)(4) of the Code.[141]

64. Sorensen saw the makeshift plastic barrier that Roberts installed over the service terminal (i.e., circuit breaker screws) in the garage junction box.[142] Sorensen found the plastic barrier insufficient to meet Code requirements because it was not a "listed item" under section 110.3 of the Code.[143] A piece of equipment becomes a "listed item" under the Code after undergoing third party lab testing to ensure it meets certain safety standards in compliance with the Code.[144] According to Sorensen, all equipment must be a "listed item" to be used for electrical work.[145]

Department's Additional Demands for Corrections

65. On November 22, 2023, Sorensen sent an email to Roberts reminding him to review the inspection reports and make all the remaining corrections by December 5, 2023.[146] Sorensen explained that using a piece of packaging plastic and tape to serve as an insulation barrier was "not going to cut it."[147] Sorensen sent a picture of what he thought should be done to sleeve the septic wiring and what Sorensen believed would be a better insulation/barrier for the circuit breaker in the garage junction box.[148] Sorensen recommended that Roberts use two rubber covers for the circuit breaker screws, which cost approximately $32.[149]

66. Once again, Roberts did not respond to Sorensen to explain to him that Roberts did not install the septic system and was not responsible for failing to sleeve or protect the septic system cords.[150] Similarly, Roberts did not explain why he believed his work on the Garage Permit met Code requirements.[151]

67. When Roberts failed to respond, Sorensen sent the matter to the Department's electrical area representative, Lowell Bradbury, for further action.[152]

68. On December 17, 2023, Bradbury sent Roberts a letter stating that all remaining corrections must be made and a reinspection scheduled by December 29,

[141] Exs. 10, 11; Test. of A. Sorensen.
[142] Test. of A. Sorensen.
[143] Test. of A. Sorensen.
[144] Test. of A. Sorensen; Ex. 21 at Code section 110.3(C).
[145] Test. of A. Sorensen.
[146] Ex. 103.
[147] Ex. 103.
[148] Ex. 103.
[149] Ex. 113; Test. of A. Sorensen.
[150] Test. of M. Roberts; Test. of A. Sorensen.
[151] Test. of M. Roberts; Test. of A. Sorensen.
[152] Test. of A. Sorensen.

2023.[153] Roberts did not make any additional corrections or schedule another inspection.[154]

69. As a result, on January 2, 2024, Bradbury referred the matter to the Department's enforcement unit.[155] For enforcement action requested, Bradbury wrote:[156]

> Whatever seems fit for these violations, should be some monetary penalty as both electrical inspector Adam [S]orensen and electrical area representative Lowell Bradbury has [sic] spend [sic] a lot of time trying to get compliance.

70. For action requested, Bradbury wrote:[157]

> That [Roberts] makes all corrections and notify electrical inspector Adam Sorensen that they are completed, as he notified Inspector Adam Sorensen that they were completed and they were not completed. Now Mat's Electric LLC won't respond to him or the letter that I sent to him.

71. On February 3, 2024, Roberts finally responded to the Department by sending an email to Bradbury.[158] Roberts apologized for not responding earlier and wrote: "[t]he corrections were completed prior to the most recent report.[159] The remaining corrections in question are not my work."[160]

72. Sorensen returned to the Doughty Property on February 24, 2024, for an inspection related to Doughty's permit to perform interior electrical work in the garage.[161] Sorensen confirmed that Roberts had not made any additional corrections on the property since the previous inspection.[162] No additional corrections have been made by Roberts as of Sorensen's last visit to the Doughty Property in May 2024.[163]

Surety Bond and Secretary of State Filings

73. Upon referral from Bradbury, Senior Investigator Chris Williams was assigned to pursue enforcement action against Respondents.[164] Williams reviewed

[153] Ex. 12.
[154] Test. of A. Sorensen.
[155] Ex. 3.
[156] Ex. 3.
[157] Ex. 3.
[158] Ex. 107.
[159] Ex. 107.
[160] Ex. 107.
[161] Test. of A. Sorensen.
[162] Test. of A. Sorensen.
[163] Test. of A. Sorensen.
[164] Test. of C. Williams.

Respondents' license records and found two issues: Mat's Electric's surety bond and registration with the Secretary of State had lapsed.[165]

74. On February 1, 2023, Mat's Electric's business registration with the Secretary of State was administratively terminated due to failure to renew.[166] Mat's Electric did not reinstate its business registration with the Secretary of State until March 11, 2024.[167] The Department was not notified of any change to Mat's Electric's business structure that would eliminate the need for its registration with the Secretary of State.[168]

75. On April 21, 2023, CNA Surety sent a letter notifying the Department that Mat's Electric's surety bond would be canceled effective June 1, 2023, due to nonpayment of the premium.[169] Mat's Electric did not have an active replacement bond until March 13, 2024, when a new surety bond with Western Surety Company became effective.[170]

Licensing Order with Penalty

76. On February 16, 2024, the Department issued a Licensing Order with Penalty to Respondents (Order).[171] The Order suspended Roberts' master electrician license and Mat's Electric's electrical contractor license until the surety bond and business registration licensing requirements were met.[172] The Order also assessed a $4,000 penalty against Respondents.[173]

77. The Department did not provide any testimony, evidence, or reasoning for the penalty amount beyond reciting the factors listed in Minn. Stat. § 14.045, subd. 3 and citing Minn. Stat. § 326B.083, subd. 1.[174]

78. There is no testimony or evidence in the record to support the Department's determination of a $4,000 penalty.

79. Because Mat's Electric obtained a new surety bond and reinstated its business registration with the Secretary of State, Roberts's master electrician license and Mat's Electric's electrical contractor license are not currently suspended.[175]

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[165] Test. of C. Williams.
[166] Test. of C. Williams; Ex. 15.
[167] Test. of C. Williams; Ex. 15.
[168] Test. of C. Williams.
[169] Ex. 16.
[170] Test. of C. Williams; Ex. 17.
[171] Notice and Order for Prehearing Conference (May 10, 2024), Attachment.
[172] Notice and Order for Prehearing Conference (May 10, 2024), Attachment at 1.
[173] Notice and Order for Prehearing Conference (May 10, 2024), Attachment at 1.
[174] Notice and Order for Prehearing Conference (May 10, 2024), Attachment at 5.
[175] Test. of C. Williams.

80. Any fact stated in the Memorandum that is not expressly referenced in these Findings of Fact is incorporated herein.

81. Any Conclusion of Law more properly considered a Finding of Fact is incorporated herein.

Based upon these Findings of Fact, the Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Department of Labor and Industry (Commissioner) have authority over this matter pursuant to Minn. Stat. §§ 14.50, 326B.082, subd. 12 (2024).

2. The Department has complied with all necessary procedural requirements of statute and rule.

3. The Department has the burden to demonstrate by a preponderance of the evidence that the violations cited in the Licensing Order occurred and that the violations warrant the penalties assessed.[176]

4. A "preponderance of the evidence" means that the ultimate facts must be established by a greater weight of the evidence.[177] "It must be of a greater or more convincing effect and . . . lead you to believe that it is more likely that the claim . . . is true than . . . not true."[178] In other words, if it is more likely than not that the facts support the Department's allegations, then the Department has met its burden. In contrast, if the evidence casting doubt on the Department's allegations is stronger and more persuasive, then the Department has failed to meet its burden. Under this standard, the Department maintains the ultimate burden of persuasion to prove that a violation occurred.

Issue 1: Code Violations (Minn. Stat. §§ 326B.35 and .36, subds. 1 and 4)

5. The Commissioner has the authority to issue a licensing order that denies, suspends, limits, places conditions on, or revokes a license under the Commissioner's authority.[179] The grounds for such licensing action include, among other things, violating applicable laws and performing "work in connection with [a] permit, license, registration, or certificate . . . that demonstrates incompetence, untrustworthiness, or financial irresponsibility."[180]

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[176] Minn. R. 1400.7300, subp. 5 (2025).
[177] 4 Minnesota Practice, CIV JIG 14.15 (2014).
[178] *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).
[179] Minn. Stat. § 326B.082, subd. 11(b).
[180] Minn. Stat. § 326B.082, subd. 11(b)(1), (10) (2024); *see* 2024 Minn. Laws ch. 127, art. 10, § 22, at 115 (renumbering the grounds for license discipline in 2024).

6. Minn. Stat. § 326B.35 requires the installation of all electrical wiring, apparatus, and equipment for electrical light, heat, power, technology circuits, and systems to comply with the Code.[181] Minn. Stat. § 326B.36, subd. 1, requires every new electrical installation, except for minor repair work, be inspected by the Department for compliance with the Code.

7. Under Minn. Stat. § 326B.36, subd. 4(c), if an electrical inspector determines that electrical work is not in compliance with the Code, the inspector must permit a reasonable opportunity for corrections to be made, unless the noncompliance seriously and proximately endangers human life and property.

8. The Department has not established by a preponderance of the evidence that Respondents failed to perform electrical work in compliance with the Code or make corrections ordered by the Department. The Department did not prove by a preponderance of the evidence that Respondents were responsible for the work alleged to have violated sections 550.15(H)(2) and 400.12(7) of the Code (septic system wiring). The Department also did not demonstrate by a preponderance of the evidence that Respondents violated sections 230.62(C) or 300.5(D)(4) of the Code (garage wiring).

Septic System Wiring

9. Section 550.15(H)(2) of the Code states, "[w]here [under-chassis] wiring is exposed to physical damage, it shall be protected by a raceway, conduit, or other means."[182] The cables hanging under the mobile home appear to be in violation of section 550.15(H)(2) of the Code.[183] However, the Department has not proved by a preponderance of the evidence that Respondents installed the septic system or place the hanging cables under the mobile home. The weight of the evidence establishes that the septic system installer, Clark's, ran the cables underneath the mobile home.

10. Section 400.12(7) of the Code prohibits the use of flexible cords or cables "where subject to physical damage."[184] The weight of the evidence establishes that the black flexible cables connecting the septic pump system to the outside electrical box and post were installed by Clark's, the septic system contractor, and that Respondents did not perform that electrical work. The Department has, therefore, failed to satisfy its burden that Respondents violated section 400.12(7) of the Code.

Garage Terminal Box

11. Section 230.62(C) of the Code states that "[b]arriers shall be placed in service equipment such that no uninsulated, ungrounded service busbar or service

[181] *See* Minn. R. 1315.0200, subp. 1a (2020) (adopting the 2020 edition of the Code). In this case, the Department's inspectors applied the 2020 version of the Code. *See* Exs. 21 and 22.
[182] Ex. 22.
[183] Ex. 19 at DLI000115-16.
[184] Ex. 22.

terminal is exposed to inadvertent contact by persons or maintenance equipment while servicing load terminations."[185] Section 230.62(C) does not require a specific type of barrier or barrier material.[186]

12. A piece of equipment becomes a "listed item" under the Code after undergoing third party lab testing to ensure it meets certain safety standards in compliance with the Code.[187]

13. Section 110.3(A) of the Code lists eight considerations for judging equipment: (1) suitability for installation and use in conformity with the Code; (2) mechanical strength and durability; (3) wire-bending and connection space; (4) electrical insulation; (5) heating effects under normal conditions of use and under abnormal conditions likely to arise; (6) arcing effects; (7) classification by type, size, voltage, current capacity, and specific use; (8) other factors that contribute to the practical safeguarding of persons using or likely to come in contact with the equipment.[188]

14. Section 110.3(B) states: "[e]quipment that is listed, labeled, or both shall be installed and used in accordance with any instructions included in the listing or labeling."[189] Section 110.3(C) states: "[p]roduct testing, evaluation, and listing (product certification) shall be performed by recognized qualified electrical testing laboratories and shall be in accordance with applicable product standards recognized as achieving equivalent and effective safety for equipment installed to comply with this Code."[190]

15. Section 110.3 does not require that all equipment used in electrical work be listed items.[191] Section 110.3 provides considerations for how electrical equipment should be judged and selected, requires that listed items be installed and used in accordance with their included instructions, and provides requirements for equipment to become a listed item under the Code.[192]

16. Neither section 110.3 nor section 230.62(C) expressly prohibits the use of a plastic barrier for service terminals. Roberts's choice to tape a piece of plastic from his truck over the service terminals in the garage service box may not be advisable or professional in appearance, but it does not rise to a violation of the Code. The Department has failed to meet its burden to establish that Respondents violated section 230.62(C) of the Code, the only Code provision cited by the Department.

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[185] Ex. 22.
[186] *See* Ex. 22.
[187] Ex. 21 at Code section 110.3(C).
[188] Ex. 21 at Code section 110.3(A).
[189] Ex. 21 at Code section 110.3(A).
[190] Ex. 21 at Code section 110.3(C).
[191] *See* Ex. 21 at Code section 110.3.
[192] Ex. 21 at Code section 110.3.

17. Section 300.5(D)(4) of the Code states: "[w]here the enclosure or raceway is subject to physical damage, the conductors shall be installed in electrical metallic tubing, rigid metal conduit, intermediate metal conduit, RTRC-XW, Schedule 80 PVC conduit, or equivalent."[193] The Code does not define "subject to physical damage."[194]

18. The Department has failed to establish by a preponderance of the evidence that the area where Respondents installed schedule 40 PVC pipe as a protective conduit was subject to physical damage. Schedule 80 PVC is only required where the enclosure or raceway is "subject to physical damage." As a result, the Department has failed to satisfy its burden to establish a violation of Code section 300.5(D)(4).

19. Because the Department has failed to show that Respondents violated the cited sections of the Code, the Department has also failed to establish that Respondents violated Minn. Stat. §§ 326B.35 and .36, subds. 1 and 4. Accordingly, these violations should be **RESCINDED**.

Issue 2: Incompetence, Untrustworthiness, or Financial Irresponsibility [Minn. Stat. § 326B.082, subd. 11(b)(9) (2022)][195]

20. In its Notice and Order for Prehearing Conference, the Department alleges that Respondents violated Minn. Stat. § 326B.082, subd. 11(b)(9) (2022) by: "failing to perform code compliant electrical work, make corrections ordered by the Department, and by misrepresenting that he made required corrections.[196]

21. The Department has failed to establish by a preponderance of the evidence that Respondents demonstrated incompetence, untrustworthiness, or financial irresponsibility in violation of Minn. Stat. § 326B.082, subd. 11(b)(9) (2022). The Department has failed to prove that Respondents performed in a manner that was noncompliant with the Code, that Respondents failed to make corrections on its own work that would be required by the Code, or that Respondents made any misrepresentations to the Department. Accordingly, this violation should be **RESCINDED**.

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[193] Ex. 22.
[194] Test. of A. Sorensen.
[195] This statutory provision was renumbered in 2024 as Minn. Stat. § 326B.082, subd. 11(b)(10). *See* 2024 Minn. Laws ch. 127, art. 10, § 22, at 115.
[196] Notice and Order for Prehearing Conference at 5 (May 10, 2024). The Department does not allege that Respondents' failure to maintain a surety bond or its Secretary of State business filing was the basis for the allegation of incompetence, untrustworthiness, or financial irresponsibility. The Department is held to the allegations contained in the Notice and Order for Hearing and the Administrative Law Judge will not add an allegation not contained in the Notice after the completion of the hearing in this matter. The Commissioner is similarly constrained to limit review to only those allegations contained in the Notice and argued at hearing.

Issue 3: Failure to Maintain Surety Bond [Minn. Stat. § 326B.33, subd. 15]

22. Minn. Stat. § 326B.33, subd. 15 requires electrical contractors to maintain a surety bond of $25,000 as a condition of licensing. The bond must be maintained at all times during which the contractor is licensed.

23. The evidence establishes that Respondents failed to maintain a surety bond between April 21, 2023, and March 13, 2024, in violation of Minn. Stat. § 326B.33, subd. 15. The Department has satisfied its burden with respect to this issue.

Issue 4: Certificate of Good Standing [Minn. R. 3800.3530, subps. 1(D) and 4]

24. Pursuant to Minn. R. 3800.3530, subp. 1(D), applicants for an electrical contractor license must provide the Department with a copy of the certificate of assumed name or a copy of the certificate of good standing issued by the Office of the Secretary of State unless the applicant uses their own full, true name as the name of the contractor. Minn. R. 3800.3530, subp. 4, requires a contractor to keep its Secretary of State certificate current and to notify the Department within 30 days of any changes.

25. Respondents failed to renew their business registration with the Secretary of State between February 1, 2023, and March 11, 2024, and did not notify the Department of any change to Respondents' business structure that would eliminate the need for its business registration, in violation of Minn. R. 3800.3530, subps. 1(D) and 4.

Sanctions to Impose

26. The Commissioner has the discretion to issue the proper sanction for violations of law for which she has authority.[197] Penalties and sanctions are reviewed for an abuse of discretion by the agency.[198] The "severity of an administrative sanction must reflect the seriousness of the violation."[199]

27. The Commissioner may issue a monetary penalty "up to $10,000 for each violation or act, conduct, or practice committed by the person."[200] In determining the penalty amount, the Commissioner must consider: (1) the willfulness of the violation; (2) the gravity of the violation, including damage to humans, animals, and the natural resources of the state; (3) the history of past violations; (4) the number of violations;

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[197] *In re Haugen*, 278 N.W.2d 75, 80 n.10 (Minn. 1979); Minn. Stat. §§ 326B.082, subds. 11(b), 12, 13, 17, .083, subd. 1.
[198] *In re Quest's Wholesale Service Quality Standards*, 678 N.W.2d 58, 65 (Minn. Ct. App. 2004), *citing In re Henry Youth Hockey Ass'n*, 511 N.W.2d 452, 456 (Minn. Ct. App. 1994), *modified*, 599 N.W.2d 410 (Minn. 1994); *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 726 (Minn. Ct. App. 2003) (citations omitted).
[199] *In re Burke*, 666 N.W.2d at 728.
[200] Minn. Stat. § 326B.082, subd. 12(b).

(5) the economic benefit gained by the person by allowing or committing the violation; and (6) other factors that justice may require.[201]

28. The Department has failed to demonstrate that the $4,000 penalty required by the Licensing Order with Penalty issued February 16, 2024, is proper or reflects the seriousness of the two violations. Imposing a $4,000 monetary penalty under the facts of this case would be an abuse of discretion by the agency.

29. Respondents have never been the subject of prior disciplinary action by the Department or prior licensing orders. The evidence does not establish that Respondents acted willful in its failure to maintain its surety bond or Secretary of State filing. Roberts credibly testified that these administrative issues slipped his mind but he corrected them as soon as he was advised of the issues by the Department. These are not serious violations that warrant a suspension of a license or the imposition of any substantial monetary penalty. The Administrative Law Judge respectfully recommends that any monetary penalty not exceed $500.

30. Any portion of the Memorandum below that is properly considered a Conclusion of Law is incorporated herein.

31. Any Finding of Fact more properly considered a Conclusion of Law is incorporated herein.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner **AFFIRM IN PART** and **RESCIND IN PART** the Licensing Order with Penalty issued to Respondents on February 16, 2024, as follows:

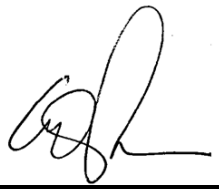
1. The violations of Minn. Stat. §§ 326B.35 and .36, subds. 1 and 4 (2024) and of Minn. Stat. § 326B.082, subd. 11(b)(9) (2022) should be **RESCINDED**.

2. The violations of Minn. Stat. § 326B.33, subd. 15 (2024) and Minn. R. 3800.3530, subps. 1(D) and 4 should be **AFFIRMED**.

[201] Minn. Stat. § 326B.083, subd. 1; Minn. Stat. § 14.045, subd. 3(a).

3. The $4,000 penalty should be **RESCINDED**.

Dated: September 12, 2025



ANN C. O'REILLY
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry (Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions of Law, and Recommendations. Under Minn. Stat. § 14.61 (2024), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of General Counsel, Department of Labor and Industry, 443 Lafayette Rd., St. Paul, MN 55155, telephone (651) 284-5019 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2024). The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1 (2024), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

I. Code Violations

The Department alleges that Respondents violated four provisions of the Code while performing electrical work at the Doughty Property and bears the burden to prove those violations by a preponderance of the evidence. Two of the alleged violations relate to septic system cables requiring protection from damage or rodents. Although protecting electrical cables and wires from damage is required by the Code, the Department's case lacks a more fundamental element – the Department has failed to establish that Respondents were responsible for those specific pieces of electrical work.

Roberts credibly testified that he was not hired by Doughty to perform electrical work on the septic system and did not place the septic cable under the mobile home or install the box, post, or cables connected to the underground septic system.[202] Roberts testified that the only work he performed related to the septic system was fishing a cable up through a wall in the mobile home and connecting it to the panel.[203] The Department did not call Doughty or the septic system installer to testify at the hearing, leaving Roberts's testimony uncontradicted. The Department relies upon a text message exchange between Doughty and Sorensen to establish Roberts's responsibility for all of the septic wiring.[204] However, Doughty's text messages do not provide sufficient detail as to which person performed each aspect of the work, and, moreover, Doughty acknowledges that the septic system installer placed the outside box connected to the cables at issue in one of the alleged violations.[205]

There was a clear lack of communication from both parties in this case that resulted in unnecessary confusion. The House Permit did not include any description of work on the septic system or AC unit.[206] Despite this, Ekholm included unfinished wiring for both items as required corrections during his inspection without first contacting Roberts about the scope of his work and the discrepancy in the fees paid for the House Permit.[207] In addition, Ekholm treated his inspection as a supplemental inspection without advising Roberts that an additional inspection was required. Ekholm's report stated that the inspection "pass[ed] with conditions." This was understandably confusing for Roberts, who was not hired to hook up the AC unit or septic system to the house.

Rather than contact Ekholm to clarify that he was not hired to hook up the AC unit and septic system, Roberts finished the hook ups for both inside the house and then failed to call Inspector Ekholm for a reinspection.[208] The scope of Roberts's work was also never clarified with Sorensen.[209]

Without clear evidence that Roberts was responsible for the unprotected septic cables under the mobile home and connecting the outside box and post to the underground septic system, the Department did not establish by a preponderance of the evidence that Respondents violated sections 550.15(H)(2) and 400.12(7) of the Code.

With respect to the Garage Permit, the Department alleges two additional Code violations: failure to install a proper barrier over the service terminals in the garage service box and failure to use schedule 80 PVC pipe for the conduit attached to the rear of the

[202] Test. of M. Roberts.
[203] Test. of M. Roberts.
[204] Ex. 13.
[205] Ex. 13.
[206] Ex. 4.
[207] Ex. 5.
[208] Test. of M. Roberts.
[209] Test. of M. Roberts; Test. of A. Sorensen.

garage. For each of these alleged violations, the Department argues that the Code requires specific types of equipment that Roberts did not use.

Taping a piece plastic over the service terminals is not a particularly professional practice by a contractor and the homeowner would have a right to be dissatisfied with that work. However, the provisions of the Code cited by the Department, sections 110.3 and 230.62(C), do not prohibit this practice or require a specific type of barrier.[210] It may be best practices for contractors to only use "listed" items when performing electrical work due to the rigorous safety testing it passes in order to be listed, but the Department has not cited any provision of the Code that specifically requires those best practices to be followed. Roberts could have easily ordered the $32 rubber circuit breaker poles (screw covers) recommended by Sorensen later in the process. However, Roberts did not do that. But Sorensen's recommendation for a better product does not establish a violation. With respect to this violation, the Department simply did not satisfy its burden and has not proven by a preponderance of the evidence that Roberts's makeshift barrier over the service terminal violated the Code.

In contrast, section 300.5(D)(4) of the Code does specifically require schedule 80 PVC conduits or their equivalent where the conduit is "subject to physical damage."[211] The Code does not define the phrase "subject to physical damage." Roberts decided to use the weaker schedule 40 PVC pipe for the rear garage conduit because the immediate area around the conduit was not grassy or exposed to vehicles, including lawn mowing equipment that might come into contact with the pipe.[212] Robert's risk analysis was supported by Sorensen's pictures of the PVC conduit. Those pictures show a significant strip of dirt and rock between the conduit and a large grassy area, indicating that it is not an area that would be subject to physical damage by lawn mowing equipment.[213]

In addition, the Department did not call Doughty to testify regarding what, if any, lawn maintenance equipment is used in the immediate area around the conduit or if there are any other potential sources of physical damage to the conduit. Sorensen's assumptions and speculation are insufficient to establish a Code violation. As a result, the Department has not met its burden to prove by a preponderance of the evidence that Roberts's use of schedule 40 PVC pipe for the rear garage conduit violated the Code.

In sum, the Department carries the burden of proof in administrative appeals when the Department is pursuing disciplinary action against a licensee for Code violations. It is incumbent upon the Department to know and understand the Code violations it is enforcing, and present evidence to establish the violations at a hearing. An inspector's opinions as to best practices (or even just better practices) is not sufficient to establish a Code violation.

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[210] Exs. 21, 22.
[211] Ex. 22.
[212] Test. of M. Roberts.
[213] Ex. 19 at DLI000111-12.

II. Surety Bond and Business Registration Lapses

Conditions of licensing for electrical contractors include maintaining a $25,000 surety bond and remaining in good standing with the Secretary of State when operating under any name other than the full, true name of the electrician.[214] These conditions are continuous to maintain licensure.[215]

The unrefuted evidence shows that Respondents failed to maintain a surety bond between April 21, 2023, and March 13, 2024, and failed to renew Mat's Electric's business registration with the Secretary of State between February 1, 2023, and March 11, 2024.[216] The Department has proven by a preponderance of the evidence that Respondents violated the surety bond and business registration requirements for licensure as an electrical contractor.

At the hearing, Roberts acknowledged the lapses in his surety bond and business registration but testified that he was unaware of the lapses at the time.[217] Roberts argued that the Department should have advised him those items needed to be remedied in its notice of license renewal.[218] Roberts is incorrect in that argument. Roberts's lack of diligence and ignorance of the law does not excuse his failure to comply with licensing requirements. Both the surety bond and the business registration serve important roles in protecting consumers. Here, the Department has not alleged that any of Respondents' customers were misled or attempted to make claims on the bond during the period of lapse. Nonetheless, Respondents have failed to comply with the law.

The Judge notes that Respondents had renewed both the surety bond and the business registration shortly after receiving the Licensing Order and were in good standing as of the date of the hearing.[219]

III. Penalty

The Department assessed a $4,000 penalty against Respondents in its Licensing Order with Penalty. The Department has provided no explanation, testimony, or other evidence of how it reached this penalty decision beyond generically listing the factors that Minn. Stat. § 14.045, subd. 3(a), requires agencies to consider when determining an appropriate penalty. However, because the Judge has determined that Respondents did not violate the Code or demonstrate incompetence, untrustworthiness, or financial irresponsibility, the Judge concludes that a $4,000 penalty is not appropriate here.

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[214] Minn. Stat. § 326B.33, subd. 15; Minn. R. 3800.3530, subps. 1(D), 4.
[215] Test. of C. Williams.
[216] Exs. 15, 16, 17.
[217] Test. of M. Roberts.
[218] Test. of M. Roberts.
[219] Test. of C. Williams.

The majority of the Department's case involved the alleged Code violations and failures to make required corrections. Without these violations, the Department is left with only the lapses in the surety bond and business registration as the basis for a penalty. The "severity of an administrative sanction must reflect the seriousness of the violation."[220] The Licensing Order with Penalty suspended Respondents' licenses until they renewed their surety bond and business registration. As of the date of the hearing, Respondents have made these renewals, are in compliance with these licensing requirements, and their licenses are no longer suspended.[221] Because the two remaining licensing violations are less serious matters, no members of the public were harmed by the lapses, Respondents have not be subject to prior disciplinary action or licensing orders, and there is no evidence in the record to support the Department's penalty calculation, the Judge recommends that Respondents be censured and not assessed a monetary penalty more than $500.

Therefore, the Commissioner should **AFFIRM IN PART** and **RESCIND IN PART** the Licensing Order with Penalty issued to Respondents on February 16, 2024.

A. C. O.

[220] *In re Burke*, 666 N.W.2d at 728.
[221] Test. of C. Williams.