

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Notary Commission of
Michael Nguyen (Notary Commission
20313121).

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for a Prehearing Conference before Administrative Law Judge (ALJ) Richard C. Luis at 1:30 p.m. on March 18, 2004, at the Office of Administrative Hearings in Minneapolis.

Michael J. Tostengard, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by or on behalf of Michael Nguyen (Respondent).

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, 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 Deputy Commissioner Kevin Murphy, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, 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. 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.

STATEMENT OF ISSUE

Whether the Respondent has dishonestly or unfaithfully discharged his duties as a notary by purporting to have notarized a document prior to the date his notary application was filed and his notary commission was granted?

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 22, 2004, the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges in this matter was mailed to the Respondent via First Class Mail at his last known address, 6940 54th Avenue North, #103, Crystal, MN 55428.

2. The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges mailed to the Respondent contained the following statement:

“The Respondent’s failure to appear at the prehearing conference may result in a findings that the Respondent is in default, that the Department of Commerce’s allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.”

3. The Respondent did not appear at the Prehearing Conference, made no request for a continuance, and did not file a Notice of Appearance.

4. The allegations of the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges are deemed proved and incorporated into these Findings by reference.

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction pursuant to Minn. Stat. §§ 14.50, 45.027 and 359.12.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The Department has complied with all relevant, substantive and procedural requirements of law and rule.

4. Under Minn. Rule 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges may be taken as true or deemed proved when a party defaults.

5. The Respondent is in default due to his failure to appear at the Prehearing Conference.

6. Based upon the facts set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, the Respondent has violated Minn. Stat. §§ 45.027, subd. 7(a)(4) and 359.12.

Based on the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that allegations 1-5 in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges be deemed proved and taken as true and that the Commissioner affirm that the Respondent violated Count 1 by purporting to have notarized a document prior to the date his notary application was filed and his notary commission was granted, an act of dishonesty or unfaithful discharge of his duties as a notary in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) and 359.12.

Dated this 1st day of June, 2004

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Default

NOTICE

Under Minn. Stat. § 14.62, subd. 1, 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.