

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

In the Matter of the Residential Building
Contractor License of J & V Construction
Co. License No. 20035318

FINDINGS OF FACT
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Howard L. Kaibel, Jr., of the State Office of Administrative Hearings, at 1:30 p.m. on March 1, 1996 in St. Paul, Minnesota. The record closed on April 1, 1996.

Phillip H. M. Grove, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of the Complainant, the Minnesota Department of Commerce. There was no appearance by or on behalf of the Respondent.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner 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 David B. Gruenes, Commissioner, Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Should administrative action be taken against the contractor's license of J & V Construction Co., because of conduct alleged in the Notice of and Order for Hearing?

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

FINDINGS OF FACT

1. The Notice of and Order for the Prehearing Conference was served upon the Respondent by certified mail on February 13, 1996.
2. The Notice of Hearing contained the following:

If Respondent fails to attend or otherwise appear at the prehearing conference or the hearing in this matter after having been served with a copy of this Order, Respondent shall be deemed in default and the

allegations or issues set forth herein may be deemed proved and Respondent's residential building contractor's license may be revoked or suspended. Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.

3. There was no appearance at the prehearing conference by Respondent's corporate officers or attorneys or by anyone else authorized to represent its interests. Mr. Victor Barr, a brother of the George Barr who is named in the Order for the Prehearing Conference as allegedly representing himself to be a corporate vice president, attended the conference and requested a settlement conference that could be attended by Respondent's qualifying person, James W. Pederson.

4. Although he objected to Respondent's failure to properly appear at the conference, Mr. Grove agreed, on behalf of Department, to participate in a settlement conference. The settlement conference was scheduled for April 1, 1996 and Mr. Pederson was notified to attend.

5. There was no appearance at the April 1, 1996 settlement conference by Mr. Pederson or by anyone else on Respondent's behalf.

6. The allegations contained in the Notice of and Order for Hearing are hereby incorporated herein by reference as facts.

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

CONCLUSIONS

1. That the Notice of and Order for Hearing is in all respects proper with regard to form, content, execution and filing.

2. That the Department of Commerce has fulfilled all other relevant substantive and procedural requirements of law and rule.

3. That the Department duly acquired and now has jurisdiction over this proceeding.

4. That Respondent, having made no appearance at the hearing and not requesting any continuance or other relief, is in default.

5. That pursuant to Minn. Rules, pt. 1400.6000, the allegations contained in the Notice of Hearing are hereby taken as true.

6. That Respondent has violated Minn. Stat. §§ 45.027 and 326.91.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Commerce take disciplinary action against J & V Construction Co.

Dated this 9th day of April, 1996.

/s/ Howard L. Kaibel, Jr.
HOWARD L. KAIBEL, JR.
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.

HLK