

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

In the Matter of the Residential Building
Contractor's License of

Michael D. Duffney, d/b/a Banner
Homes, Inc.

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FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

License No. BC2210.

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on March 26, 1997, at 9:30 a.m. in the First Floor Hearing Room of the offices of the Minnesota Department of Commerce, 133 East Seventh Street, in St. Paul, Minnesota.

Fabian Hoffner, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce ("the Department"). The Respondent, Michael D. Duffney, d/b/a Banner Homes, Inc., did not appear at the hearing. The record closed on April 8, 1997, upon receipt of a letter from counsel for the Department.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department 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 David B. Grueness, Commissioner, Department of Commerce, 133 E. 7th Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not the Respondent's residential building contractor license should be suspended or revoked in accordance with Minn. Stat.

§ 326.91, subd. 1, or whether civil penalties should be imposed under Minn. Stat. § 45.027, subds. 6 and 7.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 24, 1997, the Notice of and Order for Hearing and Order to Show Cause in this matter was mailed to the Respondent, via certified mail, at his last known addresses, 20420 Duffney Circle, Rogers, Minnesota 55374, and Banner Homes, Inc., 5437 NE Lambert Avenue, Albertville, Minnesota 55301. A copy of the Notice of and Order for Hearing and Order to Show Cause was also left in the office of the Commissioner of Commerce, in accordance with Minn. Stat. § 45.028.

2. The Notice of and Order for Hearing and Order to Show Cause mailed to the Respondent contained the following statement:

If Respondent fails to attend or otherwise appear at 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 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. The Respondent did not appear at the March 26, 1997, hearing. The Respondent made no prehearing request for a continuance, and did not file a Notice of Appearance. In a letter dated March 25, 1997, David J. Lenhardt, Attorney at Law, Gries & Lenhardt, P.L.L.P., 100 East Central Ave., P.O. Box 35, St. Michael, Minnesota 55376, made an offer to counsel for the Department to settle this matter, but did not file a Notice of Appearance or appear at the hearing on behalf of the Respondent.

4. The allegations contained in the Notice of and Order for Hearing and Order to Show Cause are deemed proved and incorporated into these Findings by reference.

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

CONCLUSIONS

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. §§ 45.027, 326.91 and 14.50.

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

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

4. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled hearing. Pursuant to that rule, the allegations and issues set out in the Notice of and Order for Hearing may be taken as true or deemed proved when a party defaults.

5. Based upon the facts set out in the Notice of and Order for Hearing and Order to Show Cause, the Respondent has violated Minn. Stat. §§ 326.91, subd. 1(2), (4), and (6), 45.027, subd. 1a and 2, and 326.94, and Minn. R. 2891.0040, subp. 1(H).

6. An order is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that disciplinary action be taken against Respondent's Residential Building Contractors License No. BC2210 and that the Commissioner consider civil penalties.

Dated this _____ day of April, 1997.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

NOTICE

Under to 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.