

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

In the Matter of the Residential Building
Contractor's License of Frank Stewart,
d/b/a Empire Exteriors,
License No. 20000534.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on Tuesday, August 5, 1997, at 9:30 a.m. at the First Floor Hearing Room, 133 East Seventh Street, St. Paul, Minnesota. Fabian Hoffner, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Frank Stewart, d/b/a Empire Exteriors, 10644 Aspen Drive NE, Miltona, Minnesota 56354. The record closed upon receipt of the Department's request for a default order on August 27, 1997.

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 David B. Gruenes, Commissioner, 133 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

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STATEMENT OF ISSUES

The issues in this case are whether the Respondent, Frank Stewart, d/b/a Empire Exteriors, engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) (1996), by breaching his contracts with three homeowners; engaged in conduct so as to cause injury or harm to the public in violation of Minn. Stat. § 326.91, subd. 1(4) or (6) (1996), by breaching his contracts with the

homeowners or negligently supervising employees; engaged in fraudulent, deceptive, or dishonest practice and bad faith in violation of Minn. Stat. § 326.91, subd. 1(2) and (11) (1996), by failing to comply with an Order for Disclosure issued by the Douglas County District Court; has shown himself to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (1996), by failing to satisfy a judgment against him arising from failing to pay a supplier; violated Minn. Stat. § 45.027, subd. 1a (1996), by failing to respond to a request for information from the Department and failing to appear before the Commissioner's representative when requested to do so; and violated Minn. Stat. § 45.027, subd. 2 (1996), by failing to submit documentation requested by Commissioner's representative; and whether Respondent is subject to discipline and civil penalties pursuant to Minn. Stat. §§ 45.027, subs. 6 - 7, and 326.91 (1996).

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

FINDINGS OF FACT

1. The Notice of and Order for Hearing and Notice of Pre-Hearing Conference in this matter was served upon the Respondent by certified mail on June 11, 1997, at 10644 Aspen Drive NE, Miltona, Minnesota, 56354.

2. The Notice of and Order for Hearing and Order to Show Cause served on the Respondents contained the following informational notice:

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 file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Respondent did not appear at the hearing scheduled for August 5, 1997, or have an appearance made on his behalf. He also did not contact the Administrative Law Judge between August 5, 1997, and the date on which this Report was issued.

4. Because the Respondent failed to appear at the hearing in this matter, he is in default. Pursuant to Minn. R. 1400.6000 (1995), the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

5. Prairie Building Center (PBC) extended a line of credit to Respondent for the purchase of building supplies. On January 29, 1996, PBC obtained a judgment against Respondent for nonpayment on his account. That judgment was docketed in the District Court of Douglas County and an Order for Disclosure was issued on June

12, 1996. Respondent has not paid any portion of the judgment and not complied with the Order for Disclosure.

6. On January 24, 1994, Respondent contracted with Lillian Dahl to make repairs on her home. On September 14, 1994, the Fergus Falls Housing and Redevelopment Authority (HRA) approved a loan to Ms. Dahl for the work to be performed. Workers assigned by Respondent improperly installed windows that were part of the contracted work. Respondent did not correct the improperly installed windows until September, 1996.

7. On May 25, 1994, Respondent contracted with Mr. and Mrs. Marian Glessing to make repairs on their home. The HRA approved a loan to the Glessings for the work to be performed. Respondent failed to install a cupboard, failed to completely install siding, improperly installed windows, and failed to finish work on the bathroom in the Glessing home. After promising to complete the work in July, 1996, Respondent failed to contact the Glessings again until September, 1996.

8. On January 1, 1995, Respondent contracted with Mr. and Mrs. Elmer Malterud to remodel the Malterud's home. On March 15, 1995, the HRA approved a loan to the Malteruds for the work to be performed. Respondent failed to complete the work to be performed under the contract with the Malteruds. In late July, 1996, Respondent returned to the Malterud's home and identified the uncompleted work. The defects were not corrected until September, 1996.

9. On July 17, 1996, PBC complained about Respondent's conduct to the Department. The Department sent a letter to Respondent inquiring about the PBC complaint. Respondent did not answer the letter. On July 26, 1996, the HRA complained to the Department about Respondent's conduct in the three contracts with the Malteruds, Ms. Dahl, and the Glessings. The Department sent another letter inquiring about the HRA complaint. Respondent did not respond to the second letter.

10. On August 7, 1996, the Department issued an Order to Appear that required Respondent to attend a meeting with the Department's investigator on August 15, 1996. Respondent called the investigator on August 13, 1996, and acknowledged problems with PBC and the three homeowners. Respondent blamed the improper work on the Malterud home on vo-tech students that were working for Respondent. Respondent maintained that he could not attend the August 15 meeting but that he would send the information requested, including a payment plan Respondent offered to PBC. Respondent failed to send the information, despite follow-up calls by the investigator.

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

CONCLUSIONS

1. The Minnesota Department of Commerce and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91 (1996).

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true.

4. Respondent's failure to satisfy the judgment held by PBC, failure to respond to the Order for Disclosure, and failure to complete work on the Malterud, Dahl, and Glessing homes demonstrate fraudulent, deceptive, or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2).

5. Respondent's failure to satisfy the judgment held by PBC and failure to complete work on the Malterud, Dahl, and Glessing homes demonstrate that Respondent is incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6).

6. Respondent's failure to respond to the Order for Disclosure demonstrates bad faith and unreasonable delays in civil litigation in violation of Minn. Stat. § 326.91, subd. 1(11).

7. Respondent's failures to complete work on the Malterud, Dahl, and Glessing homes each demonstrate a failure to reasonably supervise employees, or performing negligently or in breach of contract, so as to cause injury or harm to the public in violation of Minn. Stat. § 326.91, subd. 1(4).

8. Respondent's failure to attend the meeting with the Department's investigator or provide the information requested by the investigator demonstrates a failure to respond to the to the Department in violation of Minn. Stat. § 45.027, subds. 1a and 2.

9. The Respondent is subject to discipline and civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91, and the imposition of sanctions is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the Respondent and impose an appropriate civil penalty.

Dated this 5th day of September, 1997

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default.

NOTICE OF AGENCY DECISION

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.