

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

In the Matter of the Residential Building
Contractor License of Douglas E.
Stephens d/b/a Hometown Construction,
License No. 3433

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on Friday, August 22, 1997, at 1:00 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Philip H.M. Grove, 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, Douglas E. Stephens d/b/a Hometown Construction, 230 Germain, Frontenac, Minnesota 55026. The record closed at the conclusion of the hearing on August 22, 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 ISSUE

The issue in this case is whether the Respondent, Douglas E. Stephens d/b/a Hometown Construction, breached his contracts with two homeowners by failing to make repairs in violation of Minn. Stat. § 326.91, subd. 1(4) and (6) (1996), whether Respondent has had a judgment entered against him for failure to pay for ready-mix concrete supplied by a subcontractor, in violation of Minn. Stat. § 326.91, subd. 1(12)

(1996), and whether Respondent failed to respond to a request for information from the Department and failed to appear before the Commissioner's representative when requested to do so, in violation of Minn. Stat. § 45.027, subd. 1a (1996), and, if so, whether the Respondent's residential building contractor license should be revoked or suspended or whether the Respondent is otherwise subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 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 Federal Express overnight delivery on July 22, 1997, at 230 Germain, Frontenac, Minnesota 55026, and Box 122, Frontenac, Minnesota 55026. The envelope addressed to 230 Germain was received on July 23, 1997, at 11:40 a.m. An Amended Notice of and Order for Hearing and Notice of Prehearing Conference correcting a typographical error in the original Notice was served on Respondent by first class mail on July 25, 1997.

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 any pre-hearing conference or settlement conference or the hearing in this matter or fail to comply with any interlocutory order of the judge 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 license may be revoked or suspended and/or a civil penalty may be imposed may be imposed [sic] against Respondent without further proceedings.

(Emphasis in original.)

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 22, 1997, or have an appearance made on his behalf. He also did not contact the Administrative Law Judge between August 22, 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 and Notice of Pre-Hearing Conference are hereby taken as true and incorporated into these Findings of Fact.

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 (1994).

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. Stat. § 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Pre-hearing Conference are hereby taken as true.

4. The Respondent has violated Minn. Stat. §§ 45.027, subd. 1a, and 326.91, subds. 1(4), (6), and (12). The Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91.

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 27th day of August, 1997

BARBARA L. NEILSON
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.