

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

In the Matter of George Wisnewski,
individually and d/b/a Allstate
Construction

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION

The above-entitled matter was heard by Richard C. Luis, Administrative Law Judge, on August 9, 2000 at the Office of Administrative Hearings in Minneapolis.

Appearing on behalf of the Minnesota Department of Commerce (Department) was Jennifer S. Kenney, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

There was no appearance by or on behalf of George Wisnewski, d/b/a Allstate Construction.

The record closed on August 9, 2000.

NOTICE

Notice is hereby given that this Report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendations. Minn. Stat. § 14.61 provides that the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceedings for at least 10 days. Any party adversely affected by this Report may file exceptions or present argument to the Commissioner. Parties should contact the office of James C. Bernstein, Commissioner, Minnesota Department of Commerce, 133 East 7th Street, St. Paul, MN 55101 regarding procedures for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Whether the Cease and Desist Order Issued to George Wisnewski, d/b/a Allstate Construction, on May 1, 2000 should be affirmed, and whether adverse action should be taken against Mr. Wisnewski pursuant to Minn. Stat. §§ 45.027, subd. 6 and 326.91, subds. 1 and 4 for acting as a building contractor, remodeler or roofer without a license and for performing work in an incompetent manner.

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

FINDINGS OF FACT

1. On May 1, 2000, a Cease and Desist and Notice of Right to Hearing was served on George Wisnewski (Respondent), d/b/a Allstate Construction, at his last known address – 703 North Broad Street, Mankato, Minnesota, 56001.

2. On May 15, 2000, the Respondent requested a hearing in this matter pursuant to Minn Stat. § 45.027, subd. 5(a).

3. On June 16, 2000, a Notice of and Order for Hearing and Statement of Charges in this matter was mailed to the Respondent at the address noted in Finding 1. The Notice scheduled the hearing for 9:30 a.m. on August 9, 2000.

4. The Notice of and Order for Hearing and Statement of Charges mailed to the Respondent contains the following statement, on page 5:

“If Respondent fails to attend or otherwise appear at any prehearing conference, or settlement conference, or the hearing in this matter without the prior consent of the judge or fails 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 the Cease and Desist Order may become permanent without further proceedings.”

5. The Respondent did not appear at the hearing on August 9, 2000. He did not contact the Department or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Respondent.

6. The allegations set forth in the Cease and Desist Order and Notice of Right to Hearing and in the Notice of and Order for Hearing and Statement of Charges are taken as true and deemed proved. The allegations are incorporated into these Findings by reference.

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

CONCLUSIONS

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

2. The Cease and Desist Order and Notice of Right to Hearing was served properly on the Respondent on May 3, 2000.

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

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

5. Under Minn. Rule 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled hearing. When a party defaults, the allegations and issues set out in the Notice of and Order for Hearing and Statement of Charges may be taken as true and deemed proved. Therefore, those allegations and issues are taken as true and deemed proved. Based upon the facts set out in the Cease and Desist Order and Notice of Right to Hearing and in the Notice of and Order for Hearing and Statement of Charges, the Respondent has violated Minn. Stat. §§ 326.84 subd. 1(b), 326.842, 326.91, subd. 1(2) and 326.91, subd. 1(4). As a result, he is subject to adverse action from the Commissioner of Commerce, including the possible imposition of a monetary penalty in accordance with Minn. Stat. §§ 45.027, subd. 6 and 326.91, subds. 1 and 4.

6. An order by the Commissioner of Commerce imposing appropriate action against the Respondent is in the public interest and is necessary to protect the public health, safety and welfare.

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

RECOMMENDATION

IT IS RECOMMENDED that **ADVERSE** action be taken against George Wisnewski, d/b/a Allstate Construction within the authority of Minn. Stat. §§ 45.027 and 326.91.

Dated this 31st day of August, 2000.

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.