

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

In the Matter of Michael J. Marciniak,  
d/b/a Elite Contracting & Elite Roofing &  
Siding.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge George A. Beck commencing at 1:30 p.m. on January 12, 2001, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401-2138.

Michael Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce ("Department"). Respondent did not appear at the prehearing. The record closed on January 12, 2001 upon Respondent's default.

**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 James C. Bernstein, Commissioner, Minnesota Department of Commerce, 133 East 7<sup>th</sup> Street, St. Paul, MN 55101 to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUE**

The issue in this case is whether or not Respondent should be censured in accordance with Minn. Stat. § § 326.84, 326.91 and 45.027, or whether civil penalties should be imposed under Minn. Stat. § 45.027, subd. 6 and 7 due to violation of a consent order, unlicensed activity and fraudulent, deceptive or dishonest practices.

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

## **FINDINGS OF FACT**

1. On December 6, 2000, the Notice of and Order for Hearing in this matter was mailed to Respondent, via first class and certified mail at his last known address, 8428 Grand Avenue, Suite 94, Duluth, MN 55812.

2. The Department then served the Respondent with the original Notice as well as an amended notice by serving it on the commissioner under Minn. Stat. § 45.028.

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

**If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or 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 Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.**

4. Respondent did not appear at the January 12, 2001 prehearing conference, made no prehearing request for continuance, nor did he file a Notice of Appearance.

5. The allegations of the Notice of and Order for Hearing 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, 326.84 and 14.50.

2. 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, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Notice of and Order for Hearing, Respondent has violated Minn. Stat. §§ 45.027, 326.84, 326.842, and 326.91, subd. 1 (2).

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

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that action be taken against Respondent and that the Commissioner consider civil penalties.

Dated this 19<sup>th</sup> day of January, 2001

S/ George A. Beck

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GEORGE A. BECK

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.