

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

In the Matter of Jeff Sample, doing
business as Excellent Roofing by
Jeff Sample

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Steve M. Mihalchick ("ALJ") on July 19, 2001 for a prehearing conference. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Notice of Prehearing Conference and Statement of Charges, dated June 5, 2001.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, Jeff Sample, did not appear in person or by counsel. The record closed upon the Respondent's default on July 19, 2001.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) 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 Bernstein, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, telephone (651) 296-6025 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

STATEMENT OF ISSUE

If Sample engaged in unlicensed residential building contractor or roofer activity, failing to obtain required permits and inspections, failed to honor contract guarantees, and represented falsely that he was a licensed contractor, should the Commissioner take adverse action against Sample?

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

FINDINGS OF FACT

1. On June 8, 2001, a copy of the Notice of and Order for Hearing and Notice of Prehearing Conference and Statement of Charges was delivered via first class mail and certified mail to Jeff Sample, 10902 Fifth Street N.E., Blaine, MN 55434, as appears from an Affidavit of Mailing on file herein.

2. The Respondent did not appear at the prehearing conference. Respondent did not obtain the ALJ's prior approval to be absent from the prehearing conference. No Notice of Appearance of appearance has been filed on the Respondent's behalf. No continuance or any other relief has been requested on the Respondent's behalf.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference and Statement of Charges contained the following notice:

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 Respondent's residential building contractor license may be revoked or suspended, Respondent may be censured, and/or a civil penalty may be imposed against Respondent without further proceedings.

4. Because Respondent failed to appear, he is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

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 are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50; 45.024; 45.027, subd. 1; and 326.91 (2000).

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. The Respondent's failure to obtain a license prior to contracting to perform residential contractor or roofing work and after the issuance of a Cease and Desist Order is a violation of Minn. Stat. §§ 326.84, subds. 1 and 1B, and 326.92, subd. 1a (2000).

7. The Respondent's failure to obtain required permits and inspections for his work on a residence is a violation of Minn. Stat. § 326.91, subd. 1(2) (2000) and Minn. R. 2891.0040, subp. 1.H. (1999).

8. The Respondent's failure to honor a guarantee for work performed is a violation of Minn. Stat. § 326.91, subd. 1(4) (2000).

9. The Respondent's false representation that he was licensed is a violation of Minn. Stat. § 326.91, subd. 1(6) (2000).

10. The foregoing violations subject the Respondent to discipline and/or civil penalties pursuant to Minn. Stat. § 326.91, subd. 1 and 45.027, subds. 6 and 7 (2000).

11. Disciplinary action against the Respondent is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce take adverse action against the Respondent, censure the Respondent, and/or impose a civil penalty upon the Respondent.

Dated this 13th day of August, 2001.

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default (no tapes)

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.