

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

In the Matter of Marshall Cooper,  
Individually and d/b/a Absolutely Correct  
and Marshall Remodeling

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

The above-entitled matter was scheduled for prehearing conference before Administrative Law Judge Steve M. Mihalchick on August 1, 2002, at 1:30 p.m. at the Office of Administrative Hearings, Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, was available by telephone on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of Respondent Marshall Cooper. Respondent's last known address is 729 East Cook Avenue, St. Paul, Minnesota 55106. Based upon Respondent's failure to appear, the Department has requested a Default Recommendation.

**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 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 the Commissioner of Commerce, 85 East Seventh Place, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUES**

The issues in this case are whether the Respondent Marshall Cooper, individually and doing business as Absolutely Correct and Marshall Remodeling, engaged in unlicensed building contractor, remodeler, or roofer activity by contracting with two different individuals to perform work on their homes in 2000 and in 2001 in more than one specialty skill area without first obtaining a license in violation of Minn. Stat. § 326.84, subd. 1; performed negligently or in breach of contract by not completing work within the time frame stated in a contract with one individual in 2001 in violation of Minn. Stat. § 326.91, subd. 1(4); and violated a January 31, 2000, Cease and Desist

Order issued by the Commissioner by contracting with the two individuals to perform work as a residential remodeler on their homes in violation of Minn. Stat. § 326.92, subd. 1a.

### FINDINGS OF FACT

1. The Notice an Order for Hearing, Order for Prehearing Conference, and Statement of Charges in this matter was served upon the Respondent by US mail on June 17, 2002 at his last known address.

2. The Cease and Desist Order and Notice of and Order for Hearing and Notice of Prehearing Conference in this matter was served on the Commissioner by certified mail on July 16, 2001, pursuant to Minn. Stat. § 45.028.

3. The Notice of an Order for Hearing, Order for Prehearing Conference and Statement of Charges served on Respondent contain the following informational notice in bold-faced type:

**If Respondent fails to attend or otherwise appear at any prehearing conference, or 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's certificate of authority may be revoked or suspended, and Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.**

4. Respondent did not file a Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. Respondent failed to appear at the prehearing conference scheduled on August 1, 2002, and no appearance was made on his behalf.

5. Because Respondent failed to appear at the hearing in this matter, he 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 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 and 45.027.

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. 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 engaged in unlicensed remodeler activity by contracting with two individuals in 2000 and 2001 to perform work in more than one "specialty skill" area without first obtaining a license in violation of Minn. Stat. § 326.84, subd. 1.

5. Respondent performed negligently or in breach of contract by not completing the work within the time frame stated in the contract with the individual in 2001 in violation of Minn. Stat. § 326.91, subd. 1(4).

6. Respondent violated the January 31, 2000 Cease and Desist Order issued by the Commissioner by contracting with the two individuals to perform work as a residential remodeler on their homes in violation of Minn. Stat. § 326.92, subd. 1(a).

7. Respondent is subject to discipline and civil penalties pursuant to Minn. Stat. § 45.027, subs. 6 and 7, 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 appropriate civil penalties.

Dated August 7, 2002

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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.