

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

In the Matter of the Residential Building
Contractor's License of Midland
Contracting, Inc., License No. 20282181

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

The above-entitled matter came on for prehearing conference before Administrative Law Judge Steve M. Mihalchick on March 6, 2003, at 3:30 p.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Minneapolis, Minnesota. Jennifer S. Kenney, 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 Respondent Midland Contracting, Inc., or its owner Gerald R. Peterson. The last known address of Respondent Midland Contracting, Inc. is 7671 Central Avenue NE, Fridley, MN 55432. The last known address of Gerald R. Peterson is 2127 Albermarle Court North, Roseville, MN 55113. Based upon Respondent's failure to appear, the Department requested a Default Recommendation. The record closed in this matter upon the close of the prehearing conference on March 6, 2003.

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 the Commissioner of Commerce, 85 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument. Under Minn. Stat. § 14.62, subd. 2a, if the Commissioner fails to modify or reject this decision within 90 days after the close of the Commissioner's record, the order of the Administrative Law Judge constitutes the final decision in this matter.

STATEMENT OF ISSUES

The issues in this case are whether Respondent Midland Contracting, Inc. failed to reasonably supervise employees or subcontractors, or performed negligently or in breach of contract with Robert and Jan Manary, resulting in judgment against Respondent, in violation of Minn. Stat. § 326.91, subd. 1(4) (2002); failed to satisfy the Manary judgment in the amount of \$42,688.02, resulting in the Building Contractor's Recovery Fund covering the Manary's out-of-pocket losses, and showing itself to be incompetent, untrustworthy or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (2002); failed to satisfy the judgment of Karen Stremick in the amount of \$525.00 in violation of Minn. Stat. § 326.91, subd. 1(6) (2002); failed to satisfy the judgment of Charles and Lenore Bonn in the amount of \$51,849.61, resulting in the Recovery Fund covering the Bonn's out-of-pocket losses in violation of Minn. Stat. § 326.91, subd. 1(6) (2002); and failed to respond to the Department's requests for information or appear as ordered in violation of Minn. Stat. § 45.027, subd. 1a (2002).

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, Notice of Prehearing Conference and Statement of Charges in this matter were served upon Respondent by U.S. mail on February 4, 2003, at the last known addresses of Midland Contracting, Inc. and Gerald R. Peterson.

2. The Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges served on Respondent contained the following informational notice in bold-face type:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter without 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 license may be revoked or suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.

3. Respondent failed to file a Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. Respondent did not appear at the prehearing conference scheduled on March 6, 2003, or have an appearance made on its behalf.

4. Because Respondent failed to appear at the hearing in this matter, Respondent 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, 45.027, and 326.91 (2002).

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 Midland Contracting, Inc. failed to reasonably supervise employees or subcontractors and performed negligently or in breach of contract with Robert and Jan Manary, resulting in judgment against it, in violation of Minn. Stat. § 326.91, subd. 1(4) (2002).

5. Respondent Midland Contracting, Inc. failed to satisfy the Manary's \$42,688.02 judgment, resulting in the Recovery Fund being ordered to reimburse the Manarys for their out-of-pocket losses. Respondent has been shown to be incompetent, untrustworthy or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (2002).

6. Respondent Midland Contracting, Inc. failed to satisfy Karen Stremick's \$525.00 judgment, and has shown itself to be incompetent, untrustworthy or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (2002).

7. Respondent Midland Contracting, Inc. failed to satisfy Charles and Lenore Bonn's \$51,849.61 judgment, resulting in the Recovery Fund being ordered to reimburse the Bonns for their out-of-pocket losses. Respondent has been shown to be incompetent, untrustworthy or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (2002).

8. Respondent Midland Contracting, Inc. failed to respond to the Department's requests for information or appear as ordered in violation of Minn. Stat. § 45.027, subd. 1a (2002).

9. Respondent is subject to discipline and civil penalties pursuant to Minn. Stat. §§ 45.027, subs. 6 and 7, and 326.91, subd. 1 (2002), 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 Respondent and impose appropriate civil penalties.

Dated this 10th day of March, 2003.

/s/ Steve M. Milhalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default.

NOTICE OF AGENCY DECISION

Pursuant 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.