

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

In the Matter of Richard Rinaldi,
individually and doing business as
Rinaldi Siding & Windows,
License No. BC20038893

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on before Administrative Law Judge Beverly Jones Heydinger (“ALJ”) on April 10, 2003 for a prehearing conference. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, dated February 14, 2003.

David M. Aafedt, 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, Richard Rinaldi, did not appear in person or by counsel. There were no additional submissions subsequent to the Respondent’s default on April 10, 2003.

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 Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, telephone (651) 296-3528, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

1. Did the Respondent perform residential building contractor work without a license or certificate of exemption?
2. Did the Respondent engage in a fraudulent, deceptive or dishonest practice by failing to obtain all applicable building permits?
3. Did the Respondent violate the April 2, 2002 Consent Cease and Desist Order?
4. Is discipline in the public interest?

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

FINDINGS OF FACT

1. On February 19, 2003, a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges was sent to Richard Rinaldi, individually and doing business as Rinaldi Siding & Windows, 302 3rd Street, Lyle, MN 55953, as appears from an Affidavit of Service on file herein. The letter was not returned to the Department.

2. The Respondent did not appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

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

If Respondent fails to attend or otherwise appear at any pre-hearing 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's 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, 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. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2002).

2. Respondent received due, proper and timely notice of the charges against it, 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. By performing residential building contractor work without a license or certificate of exemption, Respondent has engaged in unlicensed residential building contractor, remodeler, or roofer activity in violation of Minn. Stat. §§ 326.91, subds. 1 and 4 and 326.842.

7. By failing to obtain all applicable building permits, Respondent has engaged in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. §326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H (2001).

8. By violating the April 2, 2002 Consent Cease and Desist Order, Respondent has violated a law, rule, or order related to the duties and responsibilities entrusted to the Commissioner in violation of Minn. Stat. §§ 45.027, subd. 6, and 326.91, subd. 1(5).

9. Because of the violations the Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 326.91, subd. 1, and 45.027, subds. 6 and 7.

10. 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 Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 21st day of April, 2003.

/s/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
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.