

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

In the Matter of Dennis Bridges,
individually and doing business as Dino
Bridges & Associates, License No.
20274000

ORDER DENYING MOTION FOR
DISMISSAL OR STAY OF
ADMINISTRATIVE PROCEEDING

A Motion for Dismissal or Stay of Administrative Proceeding was filed by Dino Bridges, individually, and doing business as Dino Bridges & Associates on August 11, 2003. Joseph A. Skokan, Piletich and Skokan, P.A. 1675 South Greeley St., Suite 100, Stillwater MN 55082 appeared on behalf of Dennis Bridges, individually and doing business as Dino Bridges & Associates ("Licensee"). The Department of Commerce filed its Memorandum in Opposition to Respondent's Motion to Dismiss or Stay on August 22, 2003. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127, appeared on behalf of the Department of Commerce.

Based on the memoranda and files herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED:

1. The Licensee's motion is DENIED.
2. This matter is scheduled for hearing on **October 14, 2003** commencing at **9:30 a.m.** at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The Prehearing Order issued July 16, 2003 remains in effect.

Dated this 12th day of September 2003.

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

The Licensee has brought this motion to dismiss, or in the alternative for a stay, because the Licensee has filed for bankruptcy protection and is protected by the provisions of federal law that automatically stay certain proceedings. The Department opposes the motion because it asserts that its authority to proceed falls within one of the exceptions to the automatic stay.

For the purpose of this motion, the facts alleged by the Department are presumed to be true. On July 7, 2002, Rick and Lori Nelson, Minnesota residents, entered into a contract with the Licensee to remodel their home. The Nelsons paid the Licensee \$70,000. Scherer Brothers Lumber Company had supplied lumber and other materials for the Nelson job. Because the Licensee did not pay Scherer Brothers, Scherer Brothers filed a lien against the Nelsons. On November 1, 2002, the Licensee wrote a check to Scherer Brothers for the supplies, but the bank refused payment because of non-sufficient funds. The Licensee did not honor the check. A complaint was filed with the Department, it began an investigation, and there were negotiations with the Licensee. On April 15, 2003, the Department sent the Licensee a draft Consent Order, consenting to a stayed suspension of his Residential Building Contractor's License if he complied with a plan to repay Scherer Brothers. The Licensee did not sign the Consent Order.

On May 6, 2003, the Licensee filed a voluntary chapter 13 petition in the United States Bankruptcy Court, case number 03-43299. On May 30, 2003, the Department initiated this action. It alleged that:

By failing to honor the non-sufficient funds check that the [Licensee] wrote to Scherer Brothers, the [Licensee] has been shown to be incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1 (6) (2002).

And:

By failing to pay Scherer Brothers for the lumber and other materials after the Nelsons had paid him in full, [Licensee] failed to use the proceeds he received for the construction of, or any improvement to, a residential real estate for the payment of labor, skill, material and machinery contribution to the construction of or improvement knowing that those costs would remain unpaid, [Licensee] has violated Minn. Stat. §326.91, subd. 1(8) (2002).

By letter dated June 16, 2003, counsel for the Licensee notified the Department of the bankruptcy filing and the automatic stay provisions of 11 U.S.C. § 362. The Licensee requested that the Department dismiss the administrative proceeding, or seek relief from the automatic stay in the bankruptcy court. The Department did not agree to either course. Thus, the Licensee filed this motion.

The Licensee asserts that the filing of a petition in bankruptcy court operates as a stay of the commencement or continuation of an administrative proceeding against the debtor to recover a claim against the debtor that arose before the filing of the bankruptcy petition. The automatic stay provision of the bankruptcy code is broad. It

states that filing for bankruptcy automatically operates as a stay, applicable to all entities, of:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;^[1]

The Licensee contends that the Department has only one factual basis for its enforcement action, the failure to pay money owing to Scherer Brothers, and that any enforcement action tied to that debt is necessarily stayed by the bankruptcy filing. If the debt is discharged in bankruptcy, the Licensee contends that there would be no basis for the Department's action.

The Department contends that there is an exception to the automatic stay provision that allows it to pursue actions necessary to protect public health, safety or welfare. Under the exception, the filing for bankruptcy does not operate as a stay under paragraphs (1), (2), or (3):

Of commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's ... police or regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's ... police or regulatory power.^[2]

The Department has stated that its proposed discipline is based on the Licensee's financial irresponsibility, and is intended to protect Minnesota consumers, suppliers, and subcontractors. It is not attempting to collect money, nor is it attempting to obtain restitution for any other party. In addition, to be clear about its intent, the Department has agreed that it will forego any civil penalties that it may be authorized to seek.^[3] It has not stated the precise form of discipline it would intend to take.

The Licensee argues that the residential building contractor's license is itself property of the bankruptcy estate and the Department cannot take any action that would compromise its value. It is doubtful that an occupational license would be considered property of the bankruptcy estate. It cannot be transferred, bought, sold or traded, and it has no cash value, except that it allows the Licensee to pursue the licensed occupation.^[4] Without question, if the Licensee had violated provisions of the licensing act entirely unrelated to money and directly tied to consumer, supplier or subcontractor

protection, the Department could act to revoke the license. None of the cases cited by the Licensee hold otherwise.

In Beker Industries Corp. v. Florida Land and Water Adjudicatory Commission,^[5] the debtor attempted to halt regulatory proceedings concerning transportation of phosphate ore because of the risk to the company's income if certain limitations were placed on the transportation, and because defending its interests in the regulatory proceeding would deplete its financial resources. The Court held that there is a difference between a regulatory body proceeding with its statutory duty to regulate, and attempting to control or distribute property to protect the government's pecuniary interest.^[6]

In matters of occupational licensing, the bankruptcy courts have consistently allowed disciplinary proceedings to proceed. The courts have held that the state licensing agencies' authority to regulate the occupations falls squarely within the exception to the automatic stay.^[7]

However, the bankruptcy courts do not permit States to act where the licensing action is a direct attempt to collect money owing to the State. For example, the bankruptcy court did not allow the State of Vermont Board of Examiners to suspend a chiropractor's license for nonpayment of state taxes. The Board was directed to wait until 30 days after notice or termination of the stay, as required by the Bankruptcy Code, before it could take action. The bankruptcy court found that the State was attempting to protect its pecuniary interests rather than exercise its right to protect the public.^[8] In this case, the Department has clearly stated that it is not attempting to collect money for the State or for any third party in this proceeding.

The Department contends that the debt alone is not its basis for action, but that the Licensee's financial mismanagement left a customer and subcontractor at risk. Also, the range of discipline available to the Department is broad. It would be premature to dismiss or stay this proceeding until the Department has the opportunity to proceed and prove the facts that it claims support a finding that the Licensee is financially irresponsible, and then determine the appropriate discipline.

A state may not take a licensing action solely on the basis of debt that is dischargeable in bankruptcy. For example, the United States Supreme Court struck down an Arizona statute suspending drivers' licenses for an unpaid judgment arising out of an automobile accident. Arizona required satisfaction of such judgments as a condition to operate a motor vehicle. The Court found that the statute was counter to the "fresh start" purpose of the Bankruptcy Act, and was, therefore, unconstitutional.^[9] In response, Congress enacted a provision that specifically prohibits any governmental unit from denying, revoking, suspending, or refusing to renew a license for a debtor solely because that debtor failed to pay a debt dischargeable in bankruptcy.^[10]

An analogy may be made to the facts of In re Christmas.^[11] In that case, the Maryland Racing Commission took action on a horse trainer's license. It did not require

the trainer to make good on debts dischargeable in bankruptcy, but only to demonstrate his prospective financial responsibility. The license was revoked when the trainer could not demonstrate his prospective financial responsibility. By so doing, the Commission did not violate the bankruptcy code.

It would be premature to assume that the Department will revoke or suspend the Licensee's residential building contractor license solely because of his failure to pay a debt dischargeable in bankruptcy.

BJH

^[1] 11 U.S.C. § 362 (a).

^[2] 11 U.S.C. § 362 (b) (4).

^[3] Department's Memorandum in Opposition to Respondent's Motion to Dismiss or Stay at 2; see also, Minn. Stat. § 45.027, subd. 6.

^[4] Compare In re Hoffman, 65 B.R. 985 (D. R.I. 1986) (liquor license was treated as property of the bankruptcy estate because it had value and could be transferred; state could not condition transfer of the license on payment of back taxes by the debtor).

^[5] 57 B.R. 611 (S.D.N.Y. 1986).

^[6] Id. at 626.

^[7] See Friedman & Shapiro, P.C. v. Shapiro, 185 B.R. 143 (S.D.N.Y. 1995), and cases concerning attorney discipline cited therein. See also, In the Matter of Edwards Mobile Homes Sales, Inc., 119 B.R. 857 (M.D. Fla. 1990) (revocation of debtor's mobile home dealer's license).

^[8] In re North, 128 B.R. 592 (D. Vt. 1991).

^[9] Perez v. Campbell, 402 U.S. 637, 91 S.Ct. 1704 (1971).

^[10] 11 U.S.C. §525.

^[11] 102 B.R. 447 (D. Md. 1989).