

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

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

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

The above-entitled matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger on October 14, 2003, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Commerce ("Department"). Joseph A. Skokan, Attorney at Law, Piletich and Skokan, P.A., 1675 South Greeley Street, Suite 100, Stillwater, Minnesota 55082, appeared on behalf of Dennis Bridges, individually and doing business as Dino Bridges & Associates ("Licensee"). The Office of Administrative Hearings' record closed at the end of the October 14, 2003 hearing.

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 these Findings of Fact, Conclusions, and Recommendation. 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 office of the Commissioner of Commerce, 85 7th Place East, Suite 500, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

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

The issues presented in this case are:

- (1) whether 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

- (2) whether by failing 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, the Licensee violated Minn. Stat. § 326.91, subd. 1 (8) (2002); and if so,
- (3) whether the Licensee's residential building contractor license should be suspended or revoked or whether the Licensee is otherwise subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subd. 6, and 326.91.

Based upon all of the proceedings herein and the previous order in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Licensee has been licensed as a Minnesota Residential Building Contractor since 2001. He has been the general contractor for approximately 30 jobs involving primarily roofing, siding, and small remodeling projects.^[1] The Licensee used subcontractors for these jobs and paid them in full. These jobs had gross revenues of \$181,550.00.^[2]

2. On July 7, 2002, Rick and Lori Nelson, Minnesota residents, entered into a contract with the Licensee to remodel their home. The Licensee was the general contractor for the project. The Nelsons paid the Licensee \$70,000.^[3] The Licensee estimated that he would make a \$25,000 profit on the job.^[4]

3. At the same time, the Licensee was hired to work on a commercial job involving the construction of a two-story connection between two existing buildings. This job was larger than those the Licensee had performed in the past. The Licensee estimated that he would have a \$50,000 - \$75,000 profit on this job.^[5]

4. The Licensee had high expectations that the commercial job would be the first of many large jobs for the same client.^[6] No other work with this client actually materialized. The result of the simultaneous jobs, and no further business from the commercial client, was insufficient cash flow in the Licensee's business.^[7]

5. Scherer Brothers Lumber Company supplied lumber and other materials for the Nelson job at a total cost of \$19,272.00.^[8]

6. The Nelsons paid the Licensee \$70,000 between August and November of 2002.^[9] These payments covered the costs of the project, including payments to materials suppliers and subcontractors.

7. On November 1, 2002, the Licensee wrote a check to Scherer Brothers in the amount of \$4017.07 for the supplies, but the bank refused payment because of non-

sufficient funds.^[10] The Licensee did not honor the check. Because the Licensee did not pay Scherer Brothers, Scherer Brothers filed liens against the Nelsons' property.^[11]

8. On February 24, 2003, Scherer Brothers filed a complaint with the Department. The Department investigated, and engaged in negotiations with the Licensee.^[12]

9. Also in February of 2003, the Licensee took a full-time job with Farmers Insurance as a senior field claims representative because he was no longer generating enough income through his contracting business.^[13]

10. On April 15, 2003, the Department sent Licensee a draft Consent Order, consenting to a stayed suspension of his Residential Building Contractor's License if he complied with a plan to pay Scherer Brothers. The Licensee did not sign the Consent Order.^[14]

11. On May 6, 2003, the Licensee filed a voluntary Chapter 13 petition in United States Bankruptcy Court, case number 03-43299.^[15] The Licensee's Modified Chapter 13 Plan called for payment of a total of \$59,100, or \$985 a month for five years.^[16] The Plan provided for payment of \$19,272 to Scherer Brothers.^[17]

12. In addition to the monthly payments of \$985, the Licensee must also pay the bankruptcy trustee "all disposable income from the operation of the debtor's business, which is presently included in debtor's income and which is anticipated to increase over the life of the plan."^[18]

13. On May 30, 2003, the Department initiated this action by serving the Licensee with a Notice and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges.^[19] 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).

14. The Licensee's Residential Building Contractor License expired on April 1, 2003. Sometime in the Spring of 2003, the Licensee sent in the paperwork to renew his license. The renewal application was incomplete and was sent back to the Licensee for

completion. The check that the Licensee submitted with the renewal application was returned to the Department because of non-sufficient funds.^[20]

15. The Licensee provided a money order to the Department on May 7, 2003. The Department did not renew the license because the renewal application was incomplete. It did not notify the Licensee or return the renewal fee.^[21]

16. At the time this action was commenced in May of 2003, the complaint filed in this case was the only complaint that had been filed against Licensee. Subsequently, the Department learned of another complaint from a homeowner who hired the Licensee for a siding job.^[22] The homeowner attempted to obtain a permit for the job sometime between April 1 and July 30, 2003, and learned that the Licensee's license had lapsed.^[23]

17. The homeowner informed the Licensee that his license had lapsed. The Licensee was surprised to learn that his license had not been renewed because he knew that the Department had received the money for his license renewal fee.^[24]

18. The Licensee called the Department and was told that his license had not been renewed because the license application was incomplete. As the Licensee had provided the money order with the license fee at the same time he returned his completed application, he did not understand how his paperwork could still be lacking. He completed all of the paperwork again and took it in to the Department.^[25] The Licensee had a lapse in his residential building contractor licensure from April 1 – July 30, 2003.^[26]

19. The Department does not allege that the Licensee knowingly performed or attempted to perform residential contracting work during the time his license lapsed.^[27]

20. After resolving the licensure issue, the Licensee returned to the homeowner prepared to do the siding work. The homeowner told the Licensee that she no longer wanted him to do the work because a Department employee had told her about the Scherer Brothers complaint.^[28]

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 have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Department bears the ultimate burden to show by a preponderance of the evidence that the Licensee's license should be subject to discipline.

4. Under Minn. Stat. § 326.91, subd. 1, items (6) and (8), the Commissioner may order disciplinary action against a license or censure a licensee and may impose a civil penalty if the Commissioner “finds that the order is in the public interest, and that the . . . licensee . . . or other agent, owner, partner, director, governor, shareholder, member, officer, qualifying person, or managing employee of the . . . licensee . . . has been shown to be incompetent, untrustworthy, or financially irresponsible.”

5. Under Minn. R. 2891.0050, subpart 1, the following acts are considered incompetent, untrustworthy, or financially irresponsible: “C. diversion of funds paid to a licensee from the purpose for which the funds were intended.”

6. By failing to pay for the materials from Scherer Brothers, after having been paid by the Nelsons to cover those bills, the Licensee failed to use the proceeds of a payment for the costs of materials for the improvement, knowing that the costs would remain unpaid.

7. By diverting funds paid to him from the purposes for which the funds were intended, the Licensee has been shown to be financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1, items (6) and (8). The Licensee is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6, and 326.91, and such discipline and/or civil penalties are in the public interest.

8. These Conclusions are reached for the reasons set forth in the attached Memorandum, which is incorporated in these Conclusions by reference.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the residential building contractor license of Dennis Bridges, individually and doing business as Dino Bridges & Associates, and/or impose an appropriate civil penalty.

Dated: November 7, 2003

S/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE

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. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must

then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Reported: Tape recorded (1 tape).

MEMORANDUM

The evidence in this case established the following:

The Licensee received money from clients to pay Scherer Brothers for supplies used in a building project and did not pay Scherer Brothers for those supplies for a total debt of \$19,272.

This debt to Scherer Brothers is contained in a bankruptcy plan that calls for the Licensee to repay the total amount owed in five years.

In the two years he was licensed as a residential building contractor, the Licensee handled projects totaling \$181,550 in gross revenue. In all of those jobs, the subcontractors were paid and no complaints were filed.

The check first provided by the Licensee to pay his license renewal fee was returned to the Department because of non-sufficient funds.

The Department has clearly met its burden of showing by a preponderance of the evidence that the Licensee's actions meet the statutory requirements for discipline.

While the Department has met its burden for discipline of the Licensee, it is not clear that a lengthy suspension or revocation would be in the public interest. If the purpose of Minn. Stat. § 326.91, subd. 1 (6), providing for the suspension or revocation of licenses on the basis of incompetence, untrustworthiness, or financial irresponsibility, is to protect the public from residential building contractors who are unlikely to fulfill their responsibilities to the homeowner, then there is some question as to whether such action is justified in this case. In this case, the Licensee did not use the homeowners' payment to pay a supplier, resulting in a lien on the homeowners' house and nonpayment of the supplier. The Licensee has since entered into bankruptcy and agreed to a plan that will repay the supplier for 100% of the debt, thereby resulting in a removal of the lien on the homeowners' house.

Although the Licensee was unlicensed for a few months, he established that he reasonably believed that he was licensed in May 2003 when he paid his renewal fee. The Department neither returned the money nor notified him that the renewal application was incomplete. It did not give notice that this was a separate basis for discipline and, based on the evidence, it is apparent that the Licensee took steps to address the lapse in his license as soon as he learned of it.

The Licensee has taken a full-time job, but states that without his contractor's license he will be unable to make enough money to make the payments called for under

the bankruptcy plan. He has a plan to fully repay Scherer Brothers, and there are no other complaints about financial mismanagement. These are factors to consider in determining the appropriate level of discipline.

B.J.H.

^[1] See Bridges Exhibit 1, listing those jobs completed.

^[2] See *id.*

^[3] See Exhibit 2.

^[4] Testimony of Dennis Bridges.

^[5] *Id.*

^[6] See Exhibit 4 (stating that “Mr. Bridges thought he was in line for about a million dollars of additional work . . .”). The Licensee testified that these expectations came from conversations with the commercial client in which he discussed other projects, such as a remodel, a raze and new build, other possible remodeling jobs, and a possible addition to a building.

^[7] When the Licensee realized the problems with insufficient cash flow in the business, he contacted the subcontractors that he owed and told them that he would honor his obligations, but that he needed some time to work it out. Testimony of Dennis Bridges.

^[8] Bridges Exhibit 2.

^[9] See Exhibit 2.

^[10] See Exhibit 1.

^[11] Exhibit 1.

^[12] See Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (“Notice of and Order for Hearing”).

^[13] Testimony of Dennis Bridges.

^[14] See Notice of and Order for Hearing.

^[15] See Notice of Motion and Motion for Dismissal or Stay of Administrative Proceeding. An Order Confirming Modified Postconfirmation Chapter 13 Plan was signed by U.S. Bankruptcy Judge Robert J. Kressel on September 18, 2003.

^[16] Bridges Exhibit 2.

^[17] See *id.*

^[18] Bridges Exhibit 2.

^[19] The Licensee maintained that, because of his bankruptcy filing, there should be an automatic stay to these proceedings pursuant to 11 U.S.C. § 362(a)(3). Notice of Motion and Motion for Dismissal or Stay of Administrative Proceedings. The ALJ denied the Licensee’s Motion by Order dated September 12, 2003.

^[20] Testimony of Christine Williams, Investigator, Enforcement Division, Department of Commerce

^[21] Testimony of Dennis Bridges.

^[22] Testimony of Christine Williams.

^[23] Testimony of Dennis Bridges.

^[24] *Id.*

^[25] *Id.*

^[26] Testimony of Christine Williams.

^[27] See Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges.

^[28] Testimony of Dennis Bridges.