

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

In the Matter of the Residential Building
Contractor's License of JMS Builders,
License No. 5117

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The entitled matter came on for a prehearing conference before Administrative Law Judge George A. Beck commencing at 10:00 a.m. on October 24, 2003, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota.

Michael J. Tostengard, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce ("Department"). Respondent did not appear at the prehearing conference.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department 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 Recommendation. 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 Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not Respondent's license should be suspended and/or revoked in accordance with Minn. Stat. §§ 326.91 and 45.027, or whether civil penalties should be imposed under Minn. Stat. § 45.027, subds. 6 and 7.

Based upon all of the proceeding herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 11, 2003, the Notice of and Order for Hearing in this matter was mailed to Respondent, via first class mail at its last known address, 1961 East Conway Street, St. Paul, MN 55119. The Respondent was advised of the date of the prehearing conference by a letter from the Administrative Law Judge dated October 2, 2003 and sent to the same address .

2. The parties arrived at a tentative settlement prior to the initial prehearing conference on July 24, 2003 but Respondent never returned an executed settlement agreement.

3. The Notice of and Order for Hearing mailed to Respondent contained the following statement.

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

4. Respondent did not appear at the October 24, 2003 prehearing conference, made no request for a continuance, nor did it file a Notice of Appearance.

5. The allegations of the Notice of and Order for Hearing are deemed proved and incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have jurisdiction pursuant to Minn. Stat. §§ 45.027, 326.91 and 14.50.

2. Respondent was given timely and proper notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000, Respondent is in default as a result of his failure to appear at the hearing.

5. Under Minn. Rule 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Notice of and Order for Hearing Respondent has violated Minn. Stat. §§ 45.027 and 326.91 and Minn. Rule pt. 2891.0050, subp. 1(c).

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against Respondent and that the Commissioner consider civil penalties.

Dated this 24th day of October 2003.

S/ George A. Beck

GEORGE A. BECK

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.