

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

In the Matter of Cross Replacement  
Windows and Siding of Minnesota, Inc.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on before Administrative Law Judge Beverly Jones Heydinger (“ALJ”) on April 16, 2004 for a prehearing conference. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Notice of Prehearing Conference, dated December 9, 2003. The prehearing conference was originally scheduled for February 18, 2004, but was continued by the administrative law judge to give additional notice.

Francis Green III, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Minnesota Department of Commerce (“Department”). The Respondent, Cross Replacement Windows and Siding of Minnesota, Inc., did not appear in person or by counsel. The record closed upon the Respondent’s default on April 16, 2004.

**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 Kevin Murphy, Deputy Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, 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 ISSUE**

1. Did Respondent engage in fraudulent, deceptive, or dishonest practices, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H, by failing to obtain the required building permit for work on a customer's home?

2. Did the Respondent fail to reasonably supervise salespeople, employees, and subcontractors on multiple projects, in violation of Minn. Stat. § 326.91, subd. 1(4)?

3. Did the Respondent fail to complete work and fail to provide the contractual warranty on projects, in breach of contract, in violation of Minn. Stat. § 326.91, subd 1(4)?

4. Did the Respondent enter into a contract with a homeowner and accept a down payment, fail to return the down payment and fail to satisfy a judgment obtained by a customer, and by such action did he demonstrate that he is incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1(6)?

5. Did the Respondent fail to provide copies of all contracts and/or change orders as requested by the Department, in violation of Minn. Stat. § 45.027, subd. 1a?

6. Did the Respondent fail to notify the Department of a change in ownership, in violation of Minn. R. 2891.0010?

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

## **FINDINGS OF FACT**

1. On December 12, 2003, a copy of the Notice and Order for Hearing for Prehearing Conference was sent via first class, to Cross Replacement Windows and Siding of Minnesota, Inc., at its last known address, 500 East Traveler Trail, No. 100, Burnsville, MN 55337, as appears from an Affidavit of Mailing on file herein. The Department also sent a copy by certified mail to the same address, and served the Office of the Commissioner by certified mail. The mailed Notice was returned to the Department as undeliverable.

2. By letter dated March 2, 2004, an additional copy of the Notice and Order for Prehearing Conference was sent to Michael Baxter, Baxter Engen, Ltd., 17645 Juniper Path, Suite 225, Lakeville, MN 55044, as a courtesy because Mr. Baxter had been providing legal representation to the Respondent. Mr. Baxter was notified that the prehearing was rescheduled to April 16, 2004.

3. The Notice and Order for Prehearing Conference contained the following informational warning:

The Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

4. Because Respondent failed to appear, it is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference 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 its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent engaged in fraudulent, deceptive, or dishonest practices, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H, by failing to obtain the required building permit for work on a customer's home.

7. Respondent failed to reasonably supervise salespeople, employees, and subcontractors on multiple projects, in violation of Minn. Stat. § 326.91, subd. 1(4).

8. Respondent failed to complete work and fail to provide the contractual warranty on projects, in breach of contract, in violation of Minn. Stat. § 326.91, subd 1(4).

9. Respondent entered into a contract with a homeowner and accepted a down payment, failed to return the down payment and failed to satisfy a judgment

obtained by a customer, and by such action demonstrated that it is incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1(6).

10. Respondent failed to provide copies of all contracts and/or change orders as requested by the Department, in violation of Minn. Stat. § 45.027, subd. 1a.

11. Respondent failed to notify the Department of a change in ownership, in violation of Minn. R. 2891.0010.

12. 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 23<sup>rd</sup> day of April, 2004.

S/ Beverly Jones Heydinger  
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BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Default (no tapes)

**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.