

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

In the Matter of the Residential Building
Contractors Licenses of Water Street
Builders, Ltd., LLC, License No.
20011108, and L. E. Bruggemann
Builders, Ltd., LLC, License No. 2063471.

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

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on February 26, 1998, at 9:30 a.m. at the offices of the Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota. Gregory Gisvold, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of either Respondent, Water Street Builders, Ltd., or L. E. Bruggemann Builders, Ltd., 10400 Bren Road East, Suite 248, Minnetonka, Minnesota 55343. The record closed upon receipt of the Department's request for a default order on March 19, 1998.

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 the Findings of Fact, Conclusions, and Recommendations. 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 David B. Gruenes, Commissioner, 133 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this case are whether the Respondents, Water Street Builders, Ltd., and L. E. Bruggemann Builders, Ltd., failed to reasonably supervise employees, agents, subcontractors, or salespersons or have performed negligently or in breach of contract, so as to cause injury or harm to the public, in violation of Minn. Stat. § 326.91, subd. 1(4) (1996), failed to satisfy judgments or to pay suppliers in violation of Minn. Stat. § 326.91, subd. 1(12), demonstrated themselves to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6), and whether such conduct subjects their licenses to discipline under Minn. Stat. §§ 45.027, subds. 6-7, and 326.91, subd. 1.

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

FINDINGS OF FACT

1. The Notice of and Order for Hearing and Order to Show Cause in this matter was served upon the Respondents by certified mail on January 29, 1998, at 10400 Bren Road East, Suite 248, Minnetonka, Minnesota 55343.

2. The Notice of and Order for Hearing and Order to Show Cause served on the Respondents contained the following informational notice:

If Respondents Water Street Builders, Ltd. L.L.C. and/or L. E. Bruggemann Builders, Ltd. L.L.C., without prior consent of the Judge, fail to attend or otherwise appear at the hearing in this matter, or at any prehearing conference or settlement conference in this matter or fail to comply with any interlocutory orders of the Judge, Respondent(s) shall be deemed in default and the allegations or issues set forth herein may be deemed proven and Respondents' licenses may be revoked or suspended or Respondents may be censured and/or a civil penalties may be imposed on Respondents without further proceedings.

3. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Respondent did not appear at the hearing scheduled for February 26, 1998, or have an appearance made on his behalf. The certified mail delivery of the Notice of and Order for Hearing had been refused. The Judge directed that the hearing be reset for March 17, 1998, and the Notice of the new date be served by U.S. Mail. The Department duly served the amended Notice upon Respondents.

4. There was no appearance by either Respondent or anyone on their behalf on March 17, 1998. Neither Respondents nor anyone on their behalf contacted the

Administrative Law Judge between the hearing date and the date on which this Report was issued.

5. Because the Respondents failed to appear at the hearing in this matter, they are in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

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

CONCLUSIONS

1. The Minnesota Department of Commerce and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91 (1996).

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondents, having made no appearance at the hearing, and not requesting any continuance or relief, are in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true.

4. Respondents failed to complete work on projects they had contracted to perform, thereby performing negligently or in breach of contract, so as to cause injury or harm to the public, in violation of Minn. Stat. § 326.91, subd. 1(4) (1996).

5. Respondent's failure to complete work they had contracted to perform demonstrates Respondents are incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6).

6. Respondents failed to satisfy judgments or to pay suppliers in violation of Minn. Stat. § 326.91, subd. 1(12),

7. The Respondents are subject to discipline and civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91, and the imposition of sanctions is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the Respondents and impose appropriate civil penalties.

Dated this 23rd day of March, 1998.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default.

NOTICE OF AGENCY DECISION

Under 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.