

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

In the Matter of Oliver Buck, individually
and doing business as Oliver Buck
Construction

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for a prehearing conference before Administrative Law Judge George A. Beck at 1:30 p.m. on September 24, 2004, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138.

Michael J. Tostengard, Assistant Attorney General, Suite 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Commerce ("Department"). The Respondent did not appear at the prehearing conference. The record closed on September 24, 2004, upon Respondent's default.

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 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 made available 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 Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, to learn 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. In order to comply with this statute, 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. 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.

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.

STATEMENT OF THE ISSUE

The issue in this case is whether or not the Respondent should be subject to license revocation or other disciplinary action.

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

FINDINGS OF FACT

1. On August 13, 2004, a Notice of and Order for Hearing and Notice of Prehearing Conference in the above matter were served on Respondent via U.S. Mail at P.O. Box 79, Main Street, Tamarack, MN 55787.

2. The Notice of and Order for Hearing and Notice of Prehearing conference served on Respondent contained the following statements:

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

If any party has good cause for requesting a delay of the prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference. A copy of the request must be served on the other party.

Any party intending to appear at the prehearing conference must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Department of Commerce's attorney. A Notice of Appearance form is enclosed.

3. Respondent did not appear at the September 24, 2004 prehearing conference, made no prehearing request for a continuance, and did not file a Notice of Appearance.

4. The allegations of the Notice of and Order for Hearing and Notice of Prehearing Conference 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 Administrative Law Judge and the Commissioner of Commerce have subject matter jurisdiction herein pursuant to Minn. Stat. § § 45.027, 326.91 and 14.50.

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

3. The Department has complied with all relevant and substantial 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 scheduled prehearing conference.

5. Under Minn. Rule 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing and Notice of Prehearing Conference 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 and Notice of Prehearing Conference, Respondent has violated Minn. Stat. § 45.027, subd. 1a, and Minn. Stat. § 326.91, subd. 1(6).

7. An order is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against Respondent's license.

Dated this 27th day of September 2004.

/s/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

Reported: Default.