

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

In the Matter of the Residential Building  
Contractor's License of National  
Restoration Specialists, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis at 1:30 p.m. on November 4, 2004 at the Office of Administrative Hearings in Minneapolis.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). There was no appearance by or on behalf of National Restoration Specialists, Inc. ("Respondent"). The record closed on November 4, 2004.

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 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/or present argument to the Commissioner. A party should contact the office of Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, Suite 500, 85 Seventh Place East, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

1. Whether disciplinary action should be taken against the Residential Building Contractor's License of National Restoration Specialists, Inc., in accordance with Minn. Stat. §§ 45.027, subds. 6 & 7 and 326.91 for failure to respond to or appear at the Department when requested or for conduct demonstrating lack of financial responsibility?

2. Whether it is appropriate to continue the Order for Summary Suspension issued against the Respondent's License?

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

### FINDINGS OF FACT

1. On October 15, 2004 a Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension was mailed to the Respondent and its Qualifying Person (Thomas A. Conlan) at the following address: 4861-B Tesla Drive, Bowie, MD 20715.

2. The Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension in this matter reads, at page 3:

“1. The Respondent’s failure to appear at the hearing may result in a finding that the Respondent is 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.”

3. The Respondent did not appear at the hearing on November 4, 2004, nor did anyone appear on its behalf. The Respondent made no prehearing request for a continuance, nor did it file a Notice of Appearance.

4. The allegations of the Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension are deemed proved and are incorporated into these Findings by reference.

5. On October 15, 2004, the Commissioner of the Minnesota Department of Commerce issued a Summary Suspension Order against the Respondent’s License, pending the outcome of this matter.

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subds. 6 & 7 and 326.91.

2. Any of the above Findings of Fact more properly termed Conclusions are hereby incorporated as such.

3. The Respondent was given timely and proper notice of the Hearing in this matter. The Department has complied with all relevant substantive and procedural requirements of law and rule.

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

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

6. Based on the facts set out in the Notice of and Order for Hearing, Statement of Charges and Order for Summary Suspension, the Respondent has violated Minn. Stat. §§ 45.027, subds. 7(a)(4) & 7a and 326.91.

7. It was appropriate to summarily suspend the Respondent's License, as authorized by Minn. Stat. § 45.027, subd. 7(b).

8. Disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on the above Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

#### IT IS RECOMMENDED:

- (1) That the Order for Summary Suspension in this matter be continued until the final decision is reached; and that disciplinary action be taken against the Residential Building Contractor's License of National Restoration Specialists, Inc.

Dated this 30th day of November, 2004

/s/ Richard C. Luis

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RICHARD C. LUIS  
Administrative Law Judge

Reported: Default

### NOTICE

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 Department is required to serve a copy of its final decision on each party and the Administrative Law Judge by first class mail or as otherwise provided by law.