3-1005-16237-2

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

In the Matter of Scott Bendickson, d/b/a Scott Bendickson Handyman, Certificate of Exemption No. 2020014	**FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy on March 15, 2005, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce (the Department). There was no appearance by or on behalf of Scott Bendickson, d/b/a Scott Bendickson Handyman (the Respondent). The OAH record closed at the conclusion of the prehearing conference.

NOTICE

This Report is a recommendation, not a final decision. The Deputy Commissioner of Commerce will make the final decision after a review of the record. The Deputy Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Deputy 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 Deputy Commissioner. Parties should contact Kevin M. Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, telephone (651) 296-9411, to ascertain the procedure for filing exceptions or presenting argument to the Deputy Commissioner.

If the Deputy 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 Deputy Commissioner, or upon the expiration of the deadline for doing so. The Deputy Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues presented in this case are whether the Commissioner should take disciplinary action against the Respondent because:

(1) the Respondent engaged in a fraudulent, deceptive, or dishonest practice by failing to obtain the necessary building permit and inspections before commencing construction on a roof in the City of Austin in 2001, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H;

(2) the Respondent performed negligently or in breach of contract by failing to complete work on the roof and failing to make required corrections, in violation of Minn. Stat. § 326.91, subd. 1(4); and

(3) the Respondent failed to reduce the contract and a change order to writing, in violation of Minn. R. 2891.0030.

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

FINDINGS OF FACT

1. On November 2, 2004, the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges initiating this contested case proceeding were served on the Respondent at 403 8th Street West, Austin, Minnesota 55912. The Prehearing Conference was scheduled to take place at 1:30 p.m. on December 22, 2004, at the Office of Administrative Hearings.

2. The Respondent did not appear in person at the prehearing conference, but he did contact the Administrative Law Judge that day and sought permission to participate by telephone. The prehearing conference took place with the Respondent participating by telephone. A hearing was scheduled for January 28, 2005.

3. In a letter dated January 6, 2005, the Department notified the Administrative Law Judge that the parties had reached an agreement to resolve this matter and that the Department would forward a copy of the executed Consent Order when the Respondent sent it back to the Department.

4. In a letter dated February 28, 2005, the Department notified the Administrative Law Judge that the Respondent had failed to forward the signed Consent Order and agreed-upon civil penalty. The Department asked the Administrative Law Judge to schedule another prehearing conference.

5. A second prehearing conference was scheduled for March 15, 2005, at 1:30 p.m. at the Office of Administrative Hearings. The letter scheduling the prehearing conference was mailed to the Respondent at his correct address, 403 8th Street Northwest, Austin, MN 55912.

6. On March 15, 2005, the Respondent failed to appear at the prehearing conference, and he failed to contact the Department or the Administrative Law Judge beforehand to request that the prehearing conference be continued to another date or time. At the outset of the conference the Administrative Law Judge attempted to

contact the Respondent at the telephone number the Respondent had provided for the first prehearing conference, but the Respondent did not answer the telephone.

7. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges contained the following language:

> The Respondent's failure to appear at the prehearing conference 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.[1]

8. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

9. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges at paragraphs 1-5 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 Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. By contracting to replace a roof in Austin, Minnesota, without obtaining the required building permit and inspections, the Respondent engaged in a fraudulent, deceptive, or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1H.

5. By failing to complete the contracted-for work and failing to make required corrections, the Respondent has performed negligently or in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4).

6. By failing to reduce the contract and a change order to writing, the Respondent violated Minn. R. 2891.0030.

7. For cause shown under Minn. Stat. § 326.91, subd. 1, the Commissioner may deny, suspend, or revoke a Certificate of Exemption issued under Minn. Stat. § 326.84, subd. 3(5), in the same manner as a license.[2]

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the Respondent.

Dated: March 22, 2005

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default.

NOTICE

Pursuant 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.

[1] Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges at 3.
[2] Minn. Stat. § 326.91, subd. 3.