

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

In the Matter of Glenn Roofing, Inc.,
a/k/a Glenn Construction, Inc. and
Mike Glenn Construction

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

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on April 15, 2005, at 2:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Christopher M. Kaisershot, 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 the Respondent, Glenn Roofing, Inc., a/k/a Glenn Construction, Inc., and Mike Glenn Construction. The OAH record closed at the conclusion of the prehearing conference on April 15, 2005.

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 the office of Kevin Murphy, Deputy Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, to ascertain the procedure for filing exceptions or presenting argument. 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.

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 ISSUES

The issues presented in this case are whether the Respondent, Glenn Roofing, Inc., a/k/a Glenn Construction, Inc., and Mike Glenn Construction, failed to repair leaks in a roof installed by Respondent and installed siding on another residence in a deficient

and unworkmanlike manner, and thereby performed negligently or in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4); represented to the Department that it had communicated with the roofing homeowners regarding inspecting and repairing their roof when in fact it had not done so, and thereby provided false, misleading, or incomplete information to the Commissioner in violation of Minn. Stat. § 45.027, subd. 7(3); refused to remove invalid mechanic's liens on a property and thereby engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit arising out of its activities as a licensee, in violation of Minn. Stat. § 326.91, subd. 1(11); and failed to satisfy judgments obtained in three separate lawsuits in Anoka County in the amounts of \$2,353.86, \$36,576, and \$11,150.17, and thereby has been incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6); and, if so, whether the Respondent should be subject to discipline, censure or a civil penalty pursuant to Minn. Stat. §§ 45.027, subs. 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, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges initiating this contested case proceeding was served on the Respondent, Glenn Roofing, Inc. a/k/a Glenn Construction, Inc., and Mike Glenn Construction, by first class U.S. mail on February 7, 2005, at the following addresses: 18600 Ulysses Street, East Bethel, MN 55011; 9921 Highway 65 NE, Blaine, MN 55434; and 1953 – 269th Avenue NE, Isanti, MN 55040.^[1]

2. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges originally scheduled a prehearing conference for March 8, 2005, at 2:30 p.m.^[2] At the Respondent's request, the prehearing was rescheduled for April 15, 2005, at 2:30 p.m.^[3]

3. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges contained the following language:

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 the Notice and Order may be accepted as true, and that its proposed disciplinary action may be upheld.^[4]

4. The Respondent did not file a notice of appearance or make any request prior to the April 15, 2005, prehearing conference for a continuance or any other relief. No one appeared at the prehearing conference on April 15, 2005, on behalf of the Respondent.

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

6. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges 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, Order for Prehearing Conference, Order to Show Cause, 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, having made no appearance at the prehearing conference, and not requesting any continuance or relief, 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, Order to Show Cause, and Statement of Charges are hereby taken as true.

4. By failing to repair leaks in a roof installed by Respondent, installing siding on another residence in a deficient and unworkmanlike manner, representing to the Department that it had communicated with the roofing homeowners regarding inspecting and repairing their roof when in fact it had not done so, refusing to remove invalid mechanic's liens on a property, and failing to satisfy judgments obtained in three separate lawsuits in Anoka County in the amounts of \$2,353.86, \$36,576, and \$11,150.17, the Respondent has performed negligently or in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4), provided false, misleading, or incomplete information to the Commissioner in violation of Minn. Stat. § 45.027, subd. 7(3), engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit arising out of its activities as a licensee in violation of Minn. Stat. § 326.91, subd. 1(11), and has been incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6). The Respondent is subject to censure and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subs. 6 - 7, and 326.91, subd. 1. 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 RECOMMENDED that the Commissioner of Commerce discipline, censure and/or impose an appropriate civil penalty against the Respondent, Glenn Roofing, Inc., a/k/a Glenn Construction, Inc. and Mike Glenn Construction.

Dated: May 11, 2005

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

^[1] Affidavit of Service by U.S. Mail of Jacki Stuhl attached to Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges.

^[2] Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, p. 1.

^[3] See Feb. 16, 2005, Letter to Respondent from counsel for the Department.

^[4] Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, p. 7.