

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

In the Matter of Michael John Williams,  
individually and d/b/a Construction  
Consultants of Hastings

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

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Steve M. Mihalchick on April 15, 2005, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Christopher 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, Michael John Williams, 1431 West 17th Street, Hastings, MN 55033. 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 M. Murphy, Deputy Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, telephone (651) 296-9411, 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, Michael John Williams, individually and d/b/a Construction Consultants of Hastings, entered into a residential building contract without a license in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subds. 1(5) and 4; demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subds. 1(6) and 4; and, if so, whether the Respondent should be subject to censure or a civil penalty pursuant to Minn. Stat. §§ 45.027, subds. 6 and 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, and Statement of Charges initiating this contested case proceeding was served on the Respondent, Michael John Williams, individually and d/b/a Construction Consultants of Hastings, via first class mail on February 17, 2005, at the following address: Michael John Williams, 1431 West 17th Street, Hastings, MN 55033.<sup>[1]</sup>

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges set a prehearing conference for April 15, 2005, at 1:30 p.m.<sup>[2]</sup>

3. The Notice of and Order for Hearing, Order for Prehearing Conference, 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 this Notice and Order may be accepted as true, and that its proposed disciplinary action may be upheld.<sup>[3]</sup>

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, he 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, and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact. In summary, those allegations include:

- A. Respondent's building contractor license, No. 20182071, was revoked by the Department on October 25, 2002 and a civil penalty of \$1,000 was imposed. To date, that penalty has not been paid.

- B. On October 1, 2003, Respondent contracted with a homeowner to perform remodeling work on her home. The homeowner made payments totaling \$75,700 for work on home, including demolition, excavation, foundation, carpentry, plumbing, electrical, sheetrock, stucco, and flooring.

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, 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, and Statement of Charges are hereby taken as true.

4. By entering into a residential building contract without a license and failing to pay for an imposed civil penalty, the Respondent has violated Minn. Stat. §§ 45.027, subd. 1a, 326.84, subds. 1 and 1b, and 326.91, subds. 1(6) and 4. The Respondent is subject to censure and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 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 censure and/or impose an appropriate civil penalty against the Respondent, Michael John Williams, individually and d/b/a Construction Consultants of Hastings.

Dated: May 9th, 2005

/s/ Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Default.

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<sup>[1]</sup> Affidavit of Service by First Class Mail of Jacki Stuhl attached to Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges.

<sup>[2]</sup> Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, p. 1.

<sup>[3]</sup> *Id.*, p. 4.