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8-1005-8467-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Building
Contractor Licenses of Feekut Home
Builders, Inc., a Minnesota Corporation,
a/k/a M & F Construction, a/k/a Feekut
Construction, a/k/a Feekut Homes, Inc.,
Building Contractor License No. 03269,
Frank J. Feela, UBD, Inc., a Minnesota
Corporation, a/k/a Ultima Builders and
Design, a Minnesota Corporation,
Building Contractor License No. 08387,
and Mark Kutzer

FINDINGS OF FACT,
CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before
Administrative Law Judge Jon L. Lunde commencing at 9:30 a.m. on
Tuesday, February 8, 1994, at the offices of the Minnesota
Department of Commerce, Main Hearing Room, 133 East 7th Street,
St. Paul, Minnesota. The hearing was held pursuant to a Notice of
and Order for Hearing and Order to Show Cause dated December 16,
1993.

Michael A. Sindt, Assistant Attorney General, 1200 NCL Tower,
445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on
behalf of the Minnesota Department of Commerce (Department).
Nobody appeared on behalf of the Respondents Feekut Home Builders,
Inc.; Frank J. Feela, UBD, Inc.; or Mark Kutzer and neither Frank
J. Feela nor Mark Kutzer were present.

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 which may adopt,

reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to 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 Gary A. Lavasseur, Deputy Commissioner, Enforcement and Licensing Divisions, 133 East 7th Street, St. Paul, Minnesota 55101, telephone (612) 296-2594, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this case are whether adverse licensing action should be taken against the Respondents under Minn. Stat. §§ 326.91 and 45.027 (1992) for misrepresenting landscaping costs to a homeowner, failing to complete contractual obligations for the installation of a driveway, failing to provide warranties while keeping warranting fees, or filing false and incomplete applications for licensure in violation of Minn. Stat. § 326.91, subd. 1(1), (2) and (6) (1992).

FINDINGS OF FACT

1. On December 17, 1993 a copy of the Notice of and Order for Hearing and Order to Show Cause were served upon the Respondents, Frank J. Feela and Mark Kutzer, by certified mail as appears from an Affidavit of Service on file herein. On the same date, copies of the Notice of and Order for Hearing and Order to Show Cause were served on Frank J. Feela and Mark Kutzer as officers of Feekut Home Builders, Inc. and UBD, Inc. by certified mail as appears from an Amended Affidavit on file herein.

2. On January 6, 1994, a copy of the Notice of and Order for Hearing and Order to Show Cause were served on the Commissioner of Commerce pursuant to Minn. Stat. § 45.028 (1992) as appears from an Affidavit of Compliance on file herein. Notice of Service of Process pursuant to Minn. Stat. § 45.028 (1992) were sent by certified mail to Respondent, Frank J. Feela, individually and as an officer of Feekut Home Builders, Inc. and on Mark Kutzer, individually and as an officer of UBD, Inc., as appears from Affidavits of Compliance on file herein.

3. The Notice of and Order for Hearing and Order to Show Cause contain the following informational language:

If Respondents fail to attend or otherwise appear at the hearing in this matter after having been served with a copy of this Order, Respondents shall be deemed in default and the allegations or issues set forth herein may be deemed proved and Respondents' building contractor license may be revoked or suspended, Respondents may be censured and/or a civil penalty may be imposed against Respondents without further proceedings.

A PARTY INTENDING TO APPEAR AT THE HEARING MUST FILE THE ENCLOSED NOTICE OF APPEARANCE WITH THE ABOVE-NAMED ADMINISTRATIVE LAW JUDGE WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS ORDER. A COPY OF THE NOTICE OF APPEARANCE MUST ALSO BE SERVED WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS ORDER UPON ASSISTANT

ATTORNEY GENERAL MICHAEL A. SINDT, 1200 NCL TOWER, 445 MINNESOTA
STREET, SAINT PAUL, MINNESOTA 55101-2130

4. The Respondents did not appear at the hearing and no appearance was entered on their behalf. Further, Respondents did not file a Notice of Appearance or make any request for a continuance or any other relief.

5. The allegations made against the Respondents in the Notice of and Order for Hearing and Order to Show Cause are true; to wit:

A. Feekut Home Builders, Inc., a Minnesota corporation (hereinafter "Respondent Feekut"), a/k/a M & F Construction, a/k/a Feekut Construction Company, a/k/a Feekut Homes, Inc., was licensed as a building contractor by the Commissioner of Commerce on January 29, 1992. On March 31, 1993, Respondent Feekut failed to renew its building contractor's license and the license lapsed and became inactive. On January 28, 1993, UBD, Inc., a Minnesota corporation (hereinafter "Respondent UBD"), a/k/a Ultima Builders and Design, was licensed as a building contractor by the Commissioner. Respondent Feekut's building contractor license listed Frank J. Feela (hereinafter "Respondent Feela") as the qualifying person for the corporation and Respondent UBD's building contractor license listed Mark Kutzer (hereinafter "Respondent Kutzer") as the qualifying person. Respondent Kutzer and Respondent Feela both operated M & F Construction prior to the requirement of state licensure for building contractors. Respondent Feekut, by addendum to original purchase agreements or other methods, transferred business from Feekut Home Builders, Inc. to UBD, Inc. on or about the time that Respondent Feekut's building contractor's license lapsed on January 28, 1993.

B. Respondent Feekut and Respondent UBD are currently or were within the last two years licensed as residential building contractors pursuant to Minn. Stat. § 326.83 et seq. (1992).

C. Respondent Feekut, as part of the standard Feekut Home Construction contract, provided a \$500 allowance to complete the required landscaping, while knowing that the actual costs range from \$1,250 to \$1,500. Homeowners who contracted with Respondent Feekut, including but not limited to J.O. and M.Q. were then forced to pay the additional costs needed to provide the required landscaping. Respondents Feekut and Feela were aware from past projects the actual costs to provide required landscaping, yet they failed to disclose the actual costs to the purchasers, including J.O. and M.Q.

D. Respondents Feekut and Feela contracted to build a home for J.S. in Corcoran, Minnesota, in which Respondent Feekut agreed to install an asphalt driveway.

E. Subsequently, Respondent Feekut notified J.S. that only 35 feet of asphalt driveway was to be provided and that because J.S.'s driveway would be in excess of 35 feet, a gravel driveway was installed. The specifications sheet on the project which provided for the construction of the asphalt driveway was signed by Respondent Feela, on behalf of Respondent Feekut.

F. Respondents Feekut and Feela, as part of the standard Feekut Home Construction contract, represented that they would provide a Home Buyers Warranty to homebuyers. Respondents Feekut, UBD and Feela signed warranty applications with several new homebuyers which represented that Home Buyers Warranty Company would provide home warranties on each new home. However, purchasers of at least several of the Feekut Homes did not receive warranties as represented by Respondents. In fact, Respondents Feekut and UBD have never participated in the Home Buyers Warranty Company program.

G. Respondent Feekut and Feela received an enrollment fee at closing in each of the transactions and then improperly sent some of these fees to the Home Buyers Warranty Company. The warranty company returned the money received to Respondents Feekut and Feela, who, did not, in turn, return the enrollment fees to the buyers.

H. During the Department's investigation, the Department conducted a judgment search in Anoka County which revealed that Respondents were named in four unsatisfied judgments. These judgments involved the failure of Respondents Feekut and Feela to use the proceeds from the construction of real estate for the payment of labor, skill, material, or machinery which knowingly remained unpaid. Respondents Feekut and Feela did not disclose an unsatisfied outstanding judgment obtained on October 29, 1991 as required when they filed their applications for licensure on January 29, 1992. Additionally, Respondent UBD did not disclose that it was a defendant in a lawsuit prior to application for licensure on January 29, 1993 as required.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of the Minnesota Department of Commerce and the Administrative Law Judge have authority to consider the charges in the Notice of and Order for Hearing and Order to Show Cause and the Commissioner has authority to take disciplinary action against the Respondents pursuant to Minn. Stat. §§ 326.91, 45.027 and 14.50 (1992).

2. The Department complied with all relevant substantive and procedural requirement of statute and rule.

3. The Respondents received timely and proper notice of the charges against them and of the hearing.

4. Respondents are in default herein under Minn. Rules, pt. 1400.6000 (1990) as a result of their failure to appear at the hearing.

5. Under Minn. Rules, pt. 1400.6000 (1991), the allegations of and the issues set out in the Notice of and Order for Hearing

and Order to Show Cause may be deemed proved without further evidence when a party defaults.

6. Respondents Feekut and Feela, by not disclosing actual landscaping costs to homebuyers, engaged in fraudulent, deceptive or dishonest practices and have shown themselves to be incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1(2) and (6) (1992).

7. Respondents Feekut and Feela, by not providing a driveway to J.S. in fulfillment of their contractual obligation, engaged in fraudulent, deceptive or dishonest practices showing themselves to be incompetent, untrustworthy or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(2) and (6) (1992).

8. Respondents Feekut and Feela, by not obtaining warranties for new homebuyers as they agreed they would and their retaining warranty fees paid by the homebuyers engaged in fraudulent, deceptive or dishonest practices and converting monies to their own use, thereby showing themselves to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(2) and (6) (1992).

7. Respondents Feekut, Feela, UBD and Kutzer by not listing outstanding judgments and lawsuits in their applications for licensure violated Minn. Stat. § 326.91, subd. 1(1) (1992).

8. Disciplinary action 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 suspend, revoke, or restrict the Respondents' license or impose a civil penalty not to exceed \$2,000 per violation for the Respondents' violations pursuant to Minn. Stat. §§ 45.027 and 326.91 (1992).

Dated this 9th day of February, 1994.

/s/ Jon L. Lunde

JON L. LUNDE
Administrative Law Judge

Reported: Default