

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Todd Bounds

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Richard C. Luis on May 15, 2006, at the Office of Administrative Hearings in Minneapolis.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by or on behalf of Todd Bounds, 16971 Partridge Street NW, Andover, MN 55304. The OAH record closed on May 15, 2006.

ISSUES

1. Whether Mr. Bounds engaged in unlicensed residential building contractor or residential remodeler activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subds. 1(5) and 4.¹

2. Whether Mr. Bounds performed in breach of three separate contracts with Minnesota homeowners and was incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subds. 1(4), 1(6) and 4.

3. Whether Mr. Bounds engaged in fraudulent, deceptive, or dishonest practices by failing to obtain the requisite building permits from the City of Edina for three separate residential projects in violation of Minn. Stat. § 326.91, subds. 1(2) and 4 and Minn. R. 2891.0040.

4. Whether Mr. Bounds is barred from engaging in the work of a residential building contractor, residential remodeler and/or roofer in the State of Minnesota because he did not respond to a Cease and Desist Order within thirty days pursuant to Minn. Stat. § 45.027, subd. 5a, until the Cease and Desist Order is modified or vacated by the Commissioner.

¹ Unless otherwise specified, all references to Minnesota Statutes are to the 2004 edition, and all references to Minnesota Rules are to the 2005 edition.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 3, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of Hearing) in this matter was mailed to Todd Bounds by first class mail at the following address: 16971 Partridge Street NW, Andover, MN 55304.² The Notice of Hearing indicated that a Prehearing Conference would be held in this matter on May 15, 2006.³

2. Also on April 3, 2006, a Cease and Desist Order pursuant to Minn. Stat. 45.027 was mailed to Todd Bounds by first class mail to the following address: 16971 Partridge Street NW, Andover, MN 55304.⁴ The Order directed Mr. Bounds to respond within thirty days or the Cease and Desist Order would become permanent.

3. The Notice of Hearing in this matter includes the following statement:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.⁵

4. No one responded to the Cease and Desist Order within the thirty-day period.

5. No one appeared at the May 15, 2006, prehearing conference on behalf of Todd Bounds. No prehearing request was made for a continuance, nor did anyone file a Notice of Appearance on behalf of Mr. Bounds.

6. The Notice of Hearing alleges that Mr. Bounds is not licensed in any capacity by the Department. The Notice also alleges that the Department received complaints from three Minnesota homeowners in September 2005 alleging that they had provided down payments to Mr. Bounds for new windows, doors and siding and that he failed to complete performance or refund the down payments he received. The Notice further alleges that Mr. Bounds failed to obtain building permits for any of the three projects.

² See Affidavit of Service by First Class Mail of Susan M. Oesterreich dated April 3, 2006.

³ Notice of Hearing, p. 1.

⁴ Cease and Desist Order and affidavit of mailing.

⁵ Notice of Hearing, p. 4, ¶ 1.

7. The allegations contained in the Notice of Hearing are deemed proven and are incorporated into these Findings by reference.

8. The taking of disciplinary action against Todd Bounds is in the public interest.

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

CONCLUSIONS

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

2. Todd Bounds was given timely and proper notice of the Prehearing Conference in this matter. The Department has complied with all procedural requirements of law and rule.

3. Under Minn. Rule 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled Prehearing Conference.

4. Under Minn. Rule 1400.6000, the allegations and issues set out in the Notice may be taken as true or deemed proven when a party defaults.

5. Based on the facts set out in the Notice of Hearing, Todd Bounds engaged in unlicensed residential building contractor or residential remodeler activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subds. 1(5) and 4. Mr. Bounds has performed negligently and in breach of contract and has demonstrated that he is incompetent, untrustworthy or financially irresponsible in violation of Minn. Stat. § 326.91, subds. 1(4), 1(6) and 4. Mr. Bounds has also engaged in fraudulent, deceptive, or dishonest practices by failing to obtain the requisite building permits from the City of Edina in violation of Minn. Stat. § 326.91, subds. 1(2) and 4 and Minn. R. 2891.0040, subp. 1H.

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

7. The Cease and Desist Order issued to the Respondent on April 3, 2006, has become permanent by operation of law pursuant to Minn. Stat. § 45.027, subd. 5a (c), until modified or vacated by the Commissioner.

Based on these Conclusions the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against Todd Bounds.

Dated: June 2, 2006

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped, One tape
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry 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 Nancy Leppink, Director of Legal Services, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651)284-5492, to learn about the procedure for filing exceptions or presenting argument.

Under 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. 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. § 14.63, 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.