

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Certificate of
Exemption Application of
Michael Eric Blomquist

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-captioned matter came on for a prehearing conference before Administrative Law Judge James E. LaFave on October 19, 2012 at the Office of Administrative Hearings. Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry ("the Department"). The Respondent, Michael Eric Blomquist, did not appear.

STATEMENT OF ISSUES

Whether the Respondent, as made evident by the Building/Land Use Permit Applications he submitted to the City of New Ulm, acted or held himself out as a residential building contractor or residential remodeler without a license in violation of Minn. Stat. §§ 326B.084 and 326B.805, subds. 1 and 3 (2010)?

Whether, because the total value of the work described in the Building/Land Use Permit Applications Respondent submitted to the City of New Ulm exceeds the \$15,000 gross annual receipts limit that applies to a certificate of exemption holder, Respondent does not meet the qualifications for a certificate of exemption under Minn. Stat. § 326b.082, subd. 11(a) (2010)?

Whether by failing to respond to the Department's November 5, 2011, letter, Respondent failed to comply with a request for information from the Department in violation of Minn. Stat. §§ 326B.082, subd. 2(b) and 326B.84(16) (2010)?

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

FINDINGS OF FACT

1. The Respondent was served with the Notice and Order for Prehearing Conference on September 13, 2012. The Respondent was served by first-class mail with postage prepaid at 61130 County Road 21, New Ulm, MN 56073, the last known address of the Respondent.

2. The Notice and Order for Prehearing Conference contained the following warning: "Respondent's failure to appear at the hearing or any prehearing conference, or any failure to comply with an order of the Administrative Law Judge, may result in a finding that Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and that its proposed action may be upheld."

3. The Respondent failed to file a Notice of Appearance with the Office of Administrative Hearings, failed to appear for the scheduled prehearing conference, and did not make a prehearing request for a continuance or any other relief. The Respondent failed to appear without the prior consent of the Administrative Law Judge. The Respondent is, therefore, in default.

4. The allegations and issues set forth in the Notice and Order for Prehearing Conference, and the exhibit attached thereto, are incorporated herein by reference in their entirety.

5. On June 25, 2010, Respondent applied for a residential remodeler certificate of exemption.

6. On October 18, 2010, the Department opened an investigation into several building/land use permit applications provided by the City of New Ulm. The applications were dated August and September 2010 and list Respondent as the contractor on the construction totaling \$30,000, including siding, re-shingling and windows.

7. On November 5, 2010, the Department sent a request for information to the Respondent, asking him for a complete list of any construction projects contracted for since January 1, 2010. No response was received from the Respondent.

8. On January 27, 2012, the Department served Respondent with a Licensing Order.¹

9. The Order denied Respondent's application for a residential building contractor's certificate of exemption and imposed a \$ 1,500 monetary penalty. The Order required Respondent to cease and desist from acting or holding himself out as a residential building contractor, residential remodeler or residential roofer for compensation in the State of Minnesota until appropriate licensure is obtained pursuant to Minn. Stat. § 326B.805, subd. 1 (2010).

10. The Order notified Respondent that, unless he requested a hearing within 30 days, the Order would become a final order of the Commissioner.

11. On February 22, 2010, the Department received Respondent's request for a hearing to contest the Order. However, after his request for hearing, Respondent agreed to a Consent Order but ultimately failed to respond to the Department.

¹ See Exhibit A to the Notice and Order for Prehearing Conference.

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

CONCLUSIONS

1. The Commissioner of Labor and Industry and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Prehearing Conference and to take the action proposed under Minn. Stat. §§ 326B.01 to 326B.085 and 14.50.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. The Respondent is in default under Minn. Rules part 1400.6000 as a result of his failure to appear at the prehearing conference.

4. Under Minn. Rules part 1400.6000, the allegations and the issues set out in the Notice and Order for Prehearing Conference may be taken as true or deemed proved without further evidence when a party defaults.

5. That the Respondent acted or held himself out as a residential building contractor or residential remodeler without a license in violation of Minn. Stat. §§ 326B.084 and 326B.805, subds. 1 and 3 (2010).

6. That because the total value of the work described in the Building/Land Use Permit Applications Respondent submitted to the City of New Ulm exceeded the \$15,000 gross annual receipts limit that applies to a certificate of exemption holder, Respondent does not meet the qualifications for a certificate of exemption under Minn. Stat. § 326b.082, subd. 11(a) (2010).

7. That by failing to respond to the Department's November 5, 2011, letter, Respondent failed to comply with a request for information from the Department in violation of Minn. Stat. §§ 326B.082, subd. 2(b) and 326B.84(16) (2010).

8. Disciplinary action against the Respondent 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 the Department of Labor and Industry take adverse action against Respondent, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated: November 8, 2012

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Commissioner Ken Peterson, Attention: Wendy Willson Legge, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call (651) 284-5126 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.