

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

In the Matter of the Administrative Order
Issued to Mackjack Construction, LLC and
Michael C. Weaver, Individually

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

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman on March 28, 2013, at the Saint Paul offices of the Office of Administrative Hearings.

John R. Mulé, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry (Department). Michael C. Weaver, appeared on his own behalf and on behalf of his sole-proprietorship, Mackjack Construction, LLC (Respondents).

STATEMENT OF THE ISSUES

1. Did the Respondents hold themselves out as a residential remodeler for compensation without having a license issued by the Commissioner, in violation of Minn. Stat. §§ 326B.084, subd. 2 and 326B.805, subs. 1 and 3?
2. Did the Respondents engage in fraudulent, deceptive or dishonest practices when they included a fictitious license number in several advertisements, in violation of Minn. Stat. §§ 326B.082, subd. 11 (b)(8) and 326B.084 (2)?
3. Did the Respondents engage in fraudulent, deceptive or dishonest practices when they misrepresented their license status in the procurement of a building contract, in violation of Minn. Stat. §§ 326B.082, subd. 11 (b)(8), and 326B.084 (2)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Respondents held themselves out as a licensed residential remodeler and roofer, notwithstanding the fact that neither Mr. Weaver nor Mackjack Construction had the required licensure. These methods were deceptive, dishonest and contrary to the public interest.

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

FINDINGS OF FACT

1. Respondents conduct their business operations out of Mr. Weaver's home in Saint Paul, Minnesota.¹

2. Neither Mr. Weaver nor his company, Mackjack Construction, LLC, hold any licenses from the Minnesota Department of Labor and Industry. Moreover, neither Mr. Weaver nor Mackjack Construction, LLC, has ever held any license issued by the Department.²

3. As part of his regular duties, Department Investigator Wayne Gartland reviews the classified advertisements for home remodeling and roofing services that are posted to the Minneapolis edition of "Craigslist."³

4. "Craigslist" is a classified advertisements website with sections devoted to jobs, housing and items for sale that are available in particular places. Craigslist features advertisements for more than 700 cities across 70 different countries.⁴

5. An April 24, 2012 advertisement by Mackjack Construction stated in part:

WILL BEAT MOST OTHER BIDS. 15 years in the field. I do the work, no subs. I will charge you what contractors pay me saving you MONEY! I can charge you for the entire job or help you. Labor only or bid the job.... SIDING AND REPAIRS \$20 per square for tear off, \$20 per square for paper on. \$80 – 90 & up per square for installation.... Mackjack Construction LLC.⁵

6. On April 26, 2012, the Department opened an investigation on the Respondents, following Investigator Gartland's review of Mackjack Construction's advertisements posted to the Minneapolis edition of "Craigslist."

7. On May 10, 2012, the Department mailed a request for information to the Respondents at their Marion Street address. The letter was later returned by the United States Postal Service as "ATTEMPTED – NOT KNOWN, UNABLE TO FORWARD."⁶

8. Investigator Gartland verified the accuracy of the Marion Street address against three sources: Respondent Mackjack Construction's corporate registry listing

¹ See, Exhibits 12 and 13.

² See, Testimony of Wayne Gartland.

³ *Id.*

⁴ See, Craigslist Factsheet (<http://www.craigslist.org/about/factsheet>).

⁵ See, Ex. 2.

⁶ See, Ex. 7 (Administrative Penalty Order); Test. of W. Gartland.

with the Office of Secretary State, the Department of Public Safety's Driver and Vehicle Services' driving license record for Mr. Weaver, and Mr. Weaver's Probation Officer.⁷

9. Following a directive from his probation officer, Mr. Weaver telephoned Investigator Gartland and provided responses to the Department's inquiries.⁸

10. Mr. Weaver was advised by Mr. Gartland that neither he nor Mackjack Construction was entitled to hold themselves out as residential building contractors, or residential remodelers, without the appropriate licensure.⁹

11. Notwithstanding this advisory, between July 8 and July 10, 2012, at least four advertisements from Mackjack Construction were posted to "Craigslist" offering siding and roofing services directly to Minnesota homeowners from the Respondents.¹⁰

12. Moreover, the advertisements included the following statement: "*License info: '#476#####'.*"¹¹

13. On September 18, 2012, the Department served Respondents with an Administrative Order. The Penalty Order directed Respondents to cease and desist from acting as, or holding themselves out as, a residential building contractor, residential remodeler, or roofer. Additionally, the Penalty Order imposed a civil penalty in the amount of \$5,892.00.¹²

14. On or around October 4, 2012, the Respondents entered into a contract with Troy and Sandy Mack of Belle Plaine, Minnesota, for residential siding work on the Macks' home. The contract form used by the Respondents to memorialize the arrangement states that Mackjack Construction, LLC, is in the business of providing "Roofing, Siding, Soffit, Fascia, Painting, Gutters [and] Windows" repairs.¹³

15. On October 18, 2012, the Department received Respondents' timely request for a hearing.¹⁴

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

⁷ Ex. 10; Test. of W. Gartland.

⁸ Test. of W. Gartland.

⁹ *Id.*

¹⁰ See, Exs. 3, 4, 5 and 6.

¹¹ *Id.*

¹² Ex. 7.

¹³ Exs. 12 and 13.

¹⁴ Ex 9.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Department of Labor and Industry have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 326B.082 and 326B.083.

2. The Notice and Order for Prehearing Conference issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The statement: “*License info: ‘#476#####’*” was placed in its Craigslist advertisements to lead members of the public to conclude that Mackjack Construction, LLC, held one or more licenses issued by the Department of Labor and Industry, when, in truth, it holds no such licenses.

4. The standard contract of Mackjack Construction, LLC, offers to practice the disciplines of a residential remodeler in Minnesota, notwithstanding that neither Mr. Weaver nor Mackjack Construction LLC has ever held the required licensure.

5. Offering to practice the disciplines of residential remodeler in Minnesota, without a license issued by the Commissioner, is a violation of Minn. Stat. §§ 326B.084, subd. 2 and 326B.085, subds. 1 and 3.

6. Respondents engaged in fraudulent, deceptive or dishonest practices when they included a fictitious license number in several advertisements, in violation of Minn. Stat. §§ 326B.082, subd. 11 (b)(8) and 326B.084 (2).¹⁵

7. Respondents engaged in fraudulent, deceptive or dishonest practices when they misrepresented their license status in the procurement of a building contract, in violation of Minn. Stat. §§ 326B.082, subd. 11 (b)(8) and 326B.084 (2).¹⁶

8. Minn. Stat. §§ 45.027 and 326B.082 empowers the Commissioner to take disciplinary action against the Respondents for their violations of agency orders, state statutes, and state rules.

9. The imposition of a disciplinary action against Respondents is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

¹⁵ See *also*, Minn. R. 2891.0040, subp. 1(B).

¹⁶ *Id.*

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the September 18, 2012 Administrative Penalty Order issued by the Commissioner of Labor and Industry against Respondents Mackjack Construction, LLC, and Michael C. Weaver be AFFIRMED.

Dated: May 30, 2013

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared

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 Recommendations. 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 Commissioner. Parties should contact Commissioner Ken Peterson, Attention: Wendy Willson Legge, Director of Legal Services, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155, telephone number: 651-284-5126, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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.

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 under Minn. Stat. § 14.61, this report becomes a final decision.

MEMORANDUM

In defense to the assessment of the Administrative Penalty Order, Mr. Weaver asserts that the Craigslist advertisements were placed on the website without his knowledge.

This claim is not credible. Moreover, it is at odds with the representations made by Mr. Weaver on his standard contract form and the advisories that Mr. Gartland made directly to Mr. Weaver in the Spring of 2012. The weight of the evidence demonstrates that Mr. Weaver knew that he was not permitted to undertake the work of a residential remodeler or roofer, and held himself out to the public as a licensed residential remodeler and roofer notwithstanding this knowledge.

Affirmance of the Administrative Penalty Order is in the public interest.

E. L. L.