

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Administrative Order
Issued to Kurtis Manley

**RECOMMENDATION ON
ORDER OF DEFAULT**

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on April 8, 2016.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). No one appeared at the evidentiary hearing on behalf of the Respondent, Kurtis Manley.

STATEMENT OF THE ISSUES

1. Whether Mr. Manley engaged in residential building contractor, residential remodeler, or residential roofer activities without a license in violation of the November 17, 2009 Administrative Order, Minn. Stat. §§ 326B.805, subds. 1 and 3, 326B.81, and 326B.84 (5) (2014)?

2. Whether Mr. Manley engaged in fraudulent, deceptive, and dishonest practices in violation of Minn. Stat. § 326B.84 (2) (2014), and Minn. R. 2891.0040, subp. 1(H) (2013)?

3. Whether Mr. Manley failed to provide reasonable supervision of his office manager, in violation of Minn. Stat. § 326B.84 (4) (2014)?

4. Whether Mr. Manley demonstrated himself to be untrustworthy, financially irresponsible, or incompetent, fraudulently used the license number of another, and engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326B.84 (2), (12) and (15) (2014)?

5. Whether Mr. Manley failed to cooperate with the Department's request for information and provided a response that was false, misleading, or incomplete, in violation of Minn. Stat. §§ 326B.082, subd. 2 and 326B.84 (14) (2014)?

6. Whether Mr. Manley's request for a hearing was "solely for the purpose of delay" as those terms are used in Minn. Stat. § 326B.082, subd. 8(d) (2014)?

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

FINDINGS OF FACT

1. On January 16, 2015, the Department served Mr. Manley with an Administrative Order.

2. On February 5, 2015, Mr. Manley requested an evidentiary hearing on the Department's claims.¹

3. On March 24, 2015, a Notice and Order for Prehearing Conference was sent to the address listed on Mr. Manley's hearing request.²

4. The Notice and Order for Prehearing Conference set a Prehearing Conference for May 11, 2015, with the expectation that the evidentiary hearing would follow in the weeks thereafter.³

5. The Notice and Order for Prehearing Conference also includes the following statements:

Respondents' 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 Respondents are in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.⁴

6. On May 11, 2015, an hour before the start of the Prehearing Conference, Mr. Manley was arrested by the Apple Valley Police Department on unrelated charges of misconduct. He was in police custody at the time of the Conference.⁵

7. The Prehearing Conference was rescheduled to June 29, 2015, and thereafter a schedule of proceedings was established, with an evidentiary hearing set for September 17, 2015.⁶

8. On August 4, 2015, Kevin Manley, the Respondent's brother, submitted a continuance request of behalf of Mr. Manley. Mr. Manley maintained that he did not have a sufficient opportunity to prepare for trial.

¹ See HEARING REQUEST at 1 (February 5, 2015).

² See *id.*; AFFIDAVIT OF AFFIDAVIT OF ANN KIRLIN (March 24, 2015).

³ NOTICE AND ORDER FOR PREHEARING CONFERENCE at 1.

⁴ NOTICE AND ORDER FOR PREHEARING CONFERENCE at 4, Additional Notice ¶ 1.

⁵ See Dakota County Booking Number 1503699 (May 11, 2015).

⁶ See SECOND AND THIRD PREHEARING ORDERS.

9. By way of a Fourth Prehearing Order, the evidentiary hearing scheduled for September 17, 2015 was cancelled, and efforts began to reschedule the hearing.⁷

10. By way of a Fifth Prehearing Order, the evidentiary hearing was rescheduled for December 15, 2015.⁸

11. On November 30, 2015, Mr. Manley belatedly disclosed that the ownership of his company, the co-Respondent Manley Development, Incorporated, had been transferred to his estranged wife. The Department expressed concern that the new corporate officers might not have received notice of the evidentiary hearing.

12. On December 16, 2015, a Prehearing Conference was held in this matter. During the Prehearing Conference, Mr. Manley pledged to file a status report by the close of business on Monday, December 28, 2015. The status report was to indicate whether he wished to proceed to an evidentiary hearing.

13. An Eighth Prehearing Order extended the submission deadline for the status report to 4:30 p.m. on December 31, 2015. The Eighth Prehearing Order also directed Mr. Manley to file with the tribunal and the Department a "listing of the dates in January and February 2016 on which he could proceed to an evidentiary hearing."⁹ No such filing was timely made.

14. On January 19, 2016, Mr. Marley indicated by way of an electronic mail message that he wished to proceed to an evidentiary hearing.

15. By way of a Ninth Prehearing Order, issued on March 7, 2016, Mr. Manley was directed to file and serve a list of witness and a set of pre-labeled exhibits that he would offer into the hearing record. The Order directed that these filings be completed by 4:30 p.m., on Friday, March 25, 2016. No such filings were ever made.

16. The Notice and Order for a Prehearing Conference alleges that:

(a) On January 16, 2015, the Department served Respondents with an Administrative Order (Order), which is attached hereto and incorporated by reference. See *a/so*, Minn. Stat. § 326B.082 (2014).

(b) The Order required Respondents to cease and desist from acting or holding themselves out as residential building contractors, residential remodelers, or residential roofers, and imposed a \$10,000 monetary penalty.

(c) The Order notified Respondents that, unless they requested a hearing within 30 days, the Order would become a final order of the Commissioner. See *a/so*, Minn. Stat. § 326B.082, subd. 8 (2014).

⁷ See FOURTH PREHEARING ORDER.

⁸ See FIFTH PREHEARING ORDER.

⁹ See EIGHTH PREHEARING ORDER.

(d) On or about February 5, 2015, the Department received Respondents' request for a hearing to contest the Order, which is attached hereto and incorporated by reference.

17. The allegations contained in the Notice and Order for Hearing, and the underlying Administrative Order, are deemed proven.

Based upon 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 and 326B.082 (2014).

2. Mr. Manley received notice of the allegations and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Mr. Manley is in default as a result of his failure, without the Administrative Law Judge's prior consent, to appear at the evidentiary hearing.

4. Pursuant to Minn. R. 1400.6000 (2015), a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Notice and Order for Prehearing may be taken as true or deemed proved without further evidence:

- (a) Mr. Manley engaged in residential building contractor, residential remodeler, or residential roofer activities without a license and in violation of the November 17, 2009 Administrative Order, Minn. Stat. §§ 326B.805, subds. 1 and 3, 326B.81, and 326B.84 (5) (2014).
- (b) Mr. Manley engaged in fraudulent, deceptive, and dishonest practices in violation of Minn. Stat. § 326B.84 (2) (2014), and Minn. R. 2891.0040, subp. 1(H) (2013).
- (c) Mr. Manley failed to provide reasonable supervision of his office manager, in violation of Minn. Stat. § 326B.84 (4) (2014).
- (d) Mr. Manley demonstrated himself to be untrustworthy, financially irresponsible, and incompetent, fraudulently used the license number of another, and engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326B.84 (2), (12) and (15) (2014).

- (e) Mr. Manley failed to cooperate with the Department's request for information and provided a response that was false, misleading, and incomplete, in violation of Minn. Stat. §§ 326B.082, subd. 2 and 326B.84 (14) (2014).

5. There is no evidence in the hearing record that Mr. Manley, in good faith, sought to develop a defense to the Department's claims, beyond the mere declaration that he had been denied "due process."¹⁰

6. Mr. Manley failed, without justification or excuse, to adhere to scheduling orders in this matter.

7. Mr. Manley submitted no proposed exhibits or list of witnesses for the evidentiary hearing.

8. Mr. Manley's request for a hearing was "solely for the purpose of delay" as those terms are used in Minn. Stat. § 326B.082, subd. 8(d).

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

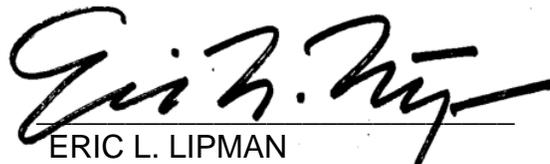
Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner:

- (1) **FIND** that Mr. Manley is in Default, under Minn. R. 1400.6000;
- (2) **AFFIRM** the Order of January 6, 2015 (RBC1411-00040/CMW); and
- (3) **ADD** to the amount of the penalty the costs charged to the Department by the Office of Administrative Hearings for these proceedings.

Dated: April 13, 2016


ERIC L. LIPMAN
Administrative Law Judge

¹⁰ See HEARING REQUEST, at 1 (February 5, 2015).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation. The Commissioner shall not issue a final order until at least five days after the date of this Report. Any person aggrieved by this Report may, within those five days, serve written comments on the Report. 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 (2014). 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 (2014), 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 (2014), this Report becomes a final decision.