

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Administrative Order  
Issued to Thomas Joseph McManus

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

The above-entitled matter came before Administrative Law Judge Laura Sue Schlatter for an evidentiary hearing on August 15, 2016, at the Office of Administrative Hearings. The record closed on that day at the conclusion of the hearing.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by, or on behalf of, Thomas J. McManus (Respondent).

**STATEMENT OF THE ISSUES**

1. Whether the Respondent acted or held himself out as a residential building contractor, residential remodeler, or residential roofer without having a license issued by the Department, in violation of Minn. Stat. § 326B.805 (2014).
2. Whether the Respondent performed negligently or in breach of contract so as to cause injury or harm to the public.<sup>1</sup>
3. Whether the Respondent demonstrated himself to be untrustworthy, financially irresponsible, or otherwise incompetent.<sup>2</sup>
4. Whether the Respondent engaged in fraudulent, deceptive, or dishonest practices.<sup>3</sup>
5. Whether the Respondent failed to include a statutory warranty in a contract for the sale of a dwelling to be completed as required by Minn. Stat. § 327A.02 (2014).
6. Whether the Administrative Order with Penalty should be affirmed.
7. Whether the Respondent's hearing request was solely for the purposes of delay, or frivolous under Minn. Stat. § 326B.082, subd. 8(d) (2014).

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<sup>1</sup> Minn. Stat. § 326B.84 (4) (2014).

<sup>2</sup> Minn. Stat. § 326B.84 (15) (2014).

<sup>3</sup> Minn. Stat. § 326B.84 (2) (2014).

## SUMMARY OF RECOMMENDATIONS

Based upon the evidence in the hearing record, the Administrative Law Judge concludes that the Respondent failed to comply with the applicable legal requirements and recommends that the Administrative Order with Penalty be **AFFIRMED**. The Administrative Law Judge further concludes that the Respondent's hearing request was frivolous and recommends that the Commissioner of the Department of Labor and Industry (Commissioner) may add to the amount of the penalty the costs to the Department charged by the Office of Administrative Hearings for the hearing.

## FINDINGS OF FACT

### Factual History

1. The Respondent is not now, and never has been, licensed by the Department as a residential building contractor, residential remodeler, residential roofer, or in any other capacity.<sup>4</sup>

2. Following an investigation, the Department concluded that the Respondent befriended an elderly couple (Mr. and Mrs. S.)<sup>5</sup> in the summer of 2013. The couple owned a duplex on Sherburne Avenue (the Property) in St. Paul, Minnesota. Although they had tenants in the duplex, due to some domestic difficulties between them, Mr. and Mrs. S. were not communicating well and were experiencing financial pressures, including possible foreclosure based on a reverse mortgage and unpaid taxes and insurance on the duplex. When he found himself unable to negotiate the domestic and financial problems he was experiencing, Mr. S. sought advice and assistance from the Respondent, whom he met through the Minnesota Assistance Council for Veterans.<sup>6</sup>

3. On or about September 11, 2013, Respondent and Mr. and Mrs. S. signed a Quit Claim deed transferring the title of the Property to Thomas Homes, Inc. According to the Quit Claim deed, Respondent paid Mr. and Mrs. S. one dollar "and other good and valuable considerations" for the Property. The Quit Claim deed was recorded in Ramsey County on September 16, 2013.<sup>7</sup>

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<sup>4</sup> Testimony (Test.) of Chris Williams, Department Investigator.

<sup>5</sup> To protect the personal privacy of the parties who were harmed by the Respondent's activities, their full names are not used in this Report.

<sup>6</sup> Test. of C. Williams; Exhibits (Exs.) 1, 4.

<sup>7</sup> Ex. 6. These dates are not consistent with the testimony of Ms. Williams or with Ex. 1 at 4 (Administrative Order with Penalty). Ms. Williams apparently relied on the date on page 1 of the Quit Claim deed (Ex. 6 at 150) which lists the date of the deed as August 12, 2013, when she determined that Mr. and Mrs. S. signed the deed on that date. However, page 2 of the deed (Ex. 6 at 151) demonstrates that the couple's signatures on the deed were notarized on September 11, 2013. It is possible that the deed was prepared on August 12, 2013, but it appears it was not signed until September 11, 2013. Similarly, Ms. Williams pointed to the stamp and seal at the bottom of page 1 of the deed (Ex. 6 at 150) when she testified that Respondent recorded the deed in Ramsey County on October 7, 2013. That stamp was affixed when a copy of the deed was made, not when the deed was recorded. The notation at the very top of the page, in the area marked "Top 3 inches reserved for recording data" shows that the deed was recorded on September 16, 2013.

4. Mr. and Mrs. S. lacked the authority to sell or transfer title to the Property to Respondent without satisfying liens held by Reverse Mortgage Solutions, Inc. (RMS),<sup>8</sup> and insured by the Federal Housing Administration.<sup>9</sup>

5. Mr. S. passed away on October 5, 2013.<sup>10</sup> On October 21, 2013, Mrs. S. wrote to RMS stating that Respondent was not authorized to represent her concerning her loan with RMS. She directed that further questions be addressed to her son-in-law, Mr. K., whose power-of-attorney was on file with RMS.<sup>11</sup> Mr. K. signed a Private Property Trespass Notice on or about October 25, 2013 prohibiting Respondent from being on the Property.<sup>12</sup>

6. During September and October of 2013, the City of St. Paul (City) issued several Abatement Orders, requiring Mr. and Mrs. S. and Thomas Homes, Inc. to remove large amounts of trash, furniture, yard waste, scrap wood, etc. from outside the Property.<sup>13</sup> On October 14, 2013, Thomas Homes, Inc. and Mr. and Mrs. S. were ordered to remediate a collapsed garage on the Property.<sup>14</sup> On November 8, 2013, the City informed Mr. K. that the City was revoking its Certificate of Occupancy for the Property, and that, unless the Property passed a reinspection scheduled for November 27, 2013, the property had to be vacated.<sup>15</sup> On November 27, 2013, the Property's Certificate of Occupancy was revoked.<sup>16</sup>

7. Respondent filed an Application for Appeal of the City's revocation on November 20, 2013.<sup>17</sup> The appeal indicated that the Appellant, Thomas Homes, Inc., needed more time to cure the violations cited by the City.<sup>18</sup>

8. On December 13, 2013, Mr. K. contacted the St. Paul City Council via email explaining that Mrs. S. remained the legal owner of the Property and that Mr. K. had full durable power-of-attorney for Mrs. S. Mr. K. requested the city council to support the recommendation to revoke the Certificate of Occupancy and the Order to Vacate. Mr. K. stated that he was working to turn the Property over to RMS. Mr. K. wanted the current tenant, whom he believed to be working for the Respondent, to be forced out of the building so that RMS could take possession of it.<sup>19</sup>

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<sup>8</sup> Ex. 1 at 4; Exs. 3, 8; Test. of C. Williams.

<sup>9</sup> Exs. 1, 8; Test. of C. Williams.

<sup>10</sup> Test. of C. Williams.

<sup>11</sup> Ex. 9; Test. of C. Williams.

<sup>12</sup> Ex. 10; Test. of C. Williams.

<sup>13</sup> Ex. 11.

<sup>14</sup> Ex. 11 at 193.

<sup>15</sup> Ex. 11 at 201-203.

<sup>16</sup> Ex. 11 at 204.

<sup>17</sup> Ex. 12 at 205.

<sup>18</sup> Ex. 12 at 205.

<sup>19</sup> Ex. 13 at 165.

9. Sometime before September 30, 2013, Homeowner B first saw the Property when he happened to drive past it and noticed a sign advertising it for sale for \$99,999, with 10 percent down and no bank approval required.<sup>20</sup> Homeowner B is an immigrant with somewhat limited English proficiency. Homeowner B stopped and Respondent showed him the house. Homeowner B offered \$90,000 and Respondent countered with \$94,000, which Homeowner B accepted.<sup>21</sup>

10. On September 30, 2013, Homeowner B brought his fiancé to see the Property. They signed a Purchase Agreement on September 30, 2013, which Respondent had prepared. At the time of the signing of the Purchase Agreement, Homeowner B first paid Respondent \$3,500. The agreement was written in English and no interpreter was provided. Respondent told Homeowner B that the Property was being sold on a Contract for Deed and that, when Homeowner B paid ten percent of the purchase price, he could move into the house immediately.<sup>22</sup>

11. Homeowner B then paid an additional \$7,000 and received a Contract for Deed.<sup>23</sup> Under the terms of the Contract for Deed, Homeowner B was to make payments of somewhat more than \$800 per month for three years to Thomas Homes, Inc.<sup>24</sup>

12. Homeowner B never moved to the Property. Respondent told him that the St. Paul Fire Department was not allowing anyone to live at the Property before certain repairs were made. Respondent promised Homeowner B he would fight the fire department's decision.<sup>25</sup> Later, Respondent told Homeowner B that the City would not allow anyone to live at the Property at all. Respondent said that they would need to tear down the existing home and build a new one.<sup>26</sup>

13. Respondent proposed to build a new home for Homeowner B for \$325,000. The new home was to be a duplex with three bedrooms in each side and two bedrooms in the carriage house.<sup>27</sup> On July 10, 2014, Homeowner B and his fiancé signed an Amendment to the Purchase Agreement and Contract for New Construction (Amended Contract).<sup>28</sup> Respondent signed the Amended Contract on behalf of Thomas Homes, Inc.<sup>29</sup>

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<sup>20</sup> Test. of Homeowner B.

<sup>21</sup> Test. of Homeowner B.

<sup>22</sup> Test. of Homeowner B.

<sup>23</sup> Test. of Homeowner B.

<sup>24</sup> Test. of Homeowner B.

<sup>25</sup> Test. of Homeowner B.

<sup>26</sup> Test. of Homeowner B.

<sup>27</sup> Ex. 15 at 228, 229; Test. of Homeowner B. Homeowner B testified that he thought there would be ten bedrooms altogether, but the plans indicate eight, including the two carriage house bedrooms.

<sup>28</sup> Ex. 14 at 214.

<sup>29</sup> Ex. 14 at 214.

14. By July 31, 2014, Homeowner B and his fiancé had paid Respondent \$53,000 toward the construction of a new home at the 215 Sherburne Avenue site, as follows:<sup>30</sup>

- \$ 3,500 September 30, 2013
- \$ 7,000 September 30, 2013
- \$ 1,500 November 30, 2013
- \$ 6,000 May 15, 2014
- \$35,000 July 31, 2014

15. On July 31, 2014, Respondent entered into a new Contract for Deed with Homeowner B and his fiancé for the purchase price of \$325,000, minus the \$53,000 already paid and a credit of \$48,750 to be allowed in consideration of Respondent's "use of the property as a model home center. . . ." The balance, \$223,750, was to be paid in installments of \$1,067.29 per month for three years beginning on October 1, 2014.<sup>31</sup>

16. The Contract for Deed stated that Homeowner B and his fiancé would be responsible for real estate tax liens and the RMS mortgage in the approximate amount of \$37,500.<sup>32</sup>

17. Respondent represented to Homeowner B that Respondent was licensed to build homes in Minnesota.<sup>33</sup> Respondent drafted all of the documents involved in the real estate transaction. At no time was an interpreter provided. Homeowner B skimmed the documents and trusted Respondent.<sup>34</sup>

18. Frustrated with the lack of progress at the Property, Homeowner B told Respondent that he would not pay any additional money until the old house was demolished.<sup>35</sup> The house was demolished in the late summer or early fall of 2014 but no further work was completed on the project.<sup>36</sup> When Homeowner B told Respondent that his landlord expected him to move out by October 1, 2014, Respondent sent a letter to Homeowner B and his fiancé, dated September 11, 2014, stating that Thomas Homes, Inc. hoped one of the duplex units could be complete by October 15, 2014. The September 11, 2014 letter also blamed the delays in part on Homeowner B and his fiancé, claiming that they had failed to sign certain forms necessary to move forward with the project.<sup>37</sup> No progress was ever made on the building project.<sup>38</sup>

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<sup>30</sup> Ex. 14 at 214; Ex. 16 at 241-242.

<sup>31</sup> Exs. 18, 19.

<sup>32</sup> Ex. 19 at 252.

<sup>33</sup> Test. of Homeowner B.

<sup>34</sup> Test. of Homeowner B.

<sup>35</sup> Test. of Homeowner B.

<sup>36</sup> Ex. 23; Test. of Homeowner B.

<sup>37</sup> Ex. 22 at 269.

<sup>38</sup> Test. of Homeowner B, C. Williams.

19. Homeowner B attempted to contact Respondent in the following weeks and months, without success. He tried Respondent's homes as well as his office address. Ultimately, Homeowner B contacted the police.<sup>39</sup>

20. None of the \$53,000 Homeowner B and his fiancé paid to Respondent was ever returned. That money represents 30 years' of savings to Homeowner B and he can no longer afford to purchase a home.<sup>40</sup>

21. Respondent has an extensive history of activities involving fraud and theft related to real estate transactions and building schemes. He has been criminally convicted and incarcerated in Minnesota, Illinois, and Wisconsin for these activities, dating back to at least 1988.<sup>41</sup>

### **Procedural History**

22. An Administrative Order was originally issued on September 9, 2015, against Thomas Homes, Inc. as well as Respondent, individually. Because neither Thomas Homes, Inc. nor Respondent held a license to engage in residential contracting, Respondent was not permitted to act on behalf of Thomas Homes, Inc.<sup>42</sup> Respondent submitted a timely appeal dated October 7, 2015.<sup>43</sup>

23. During the January 5, 2016 First Prehearing Conference, the Respondent clarified that he had submitted the appeal on his own behalf and not on behalf of Thomas Homes, Inc. He further stated that he lacked the authority to request an appeal on behalf of Thomas Homes, Inc. and that he could not state with certainty where the ownership of Thomas Homes, Inc. vested at that time. Respondent also stated that he believed Thomas Homes, Inc. was represented by counsel.<sup>44</sup> The matter was continued to provide the Department the opportunity to determine whether it had properly served Thomas Homes, Inc., whether Thomas Homes, Inc. had effectively appealed, and whether it was represented by counsel.<sup>45</sup>

24. At the February 5, 2016 Second Prehearing Conference, the Department reported that it intended to amend the Notice and Order for Hearing to apply only to Respondent. The Department served a Notice of Amendment, Notice and Order for Hearing, and Amended Statement of Charges in this matter by U.S. mail on Respondent on March 21, 2016 (Amended Notice).<sup>46</sup> The Amended Notice does not raise any new

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<sup>39</sup> Test. of Homeowner B.

<sup>40</sup> Test. of Homeowner B.

<sup>41</sup> Exs. 29-51.

<sup>42</sup> Minn. Stat. § 326B.805, subd. 6 (1), (3) (2016).

<sup>43</sup> Ex. 2.

<sup>44</sup> Recording of January 5, 2016 prehearing conference.

<sup>45</sup> FIRST PREHEARING ORDER (January 5, 2016).

<sup>46</sup> Attachment (Att.) A, NOTICE OF AMENDMENT, NOTICE AND ORDER FOR HEARING, AND AMENDED STATEMENT OF CHARGES (March 22, 2016); Att. C, AFFIDAVIT (AFF.) OF ANN KIRLIN (March 21, 2016). The Affidavit of Service states that Ann Kirlin served the Amended Notice on March 21, 2016 (Att. C) but the signature on the Amended Notice itself is dated March 22, 2016. No explanation is provided for the discrepancy in the dates.

allegations against Respondent, but clarifies that this proceeding involves only Respondent's appeal of the September 9, 2015 Administrative Order.<sup>47</sup>

25. The Administrative Order concludes that Respondent violated Minnesota law when he acted or held himself out as a residential building contractor, residential remodeler, or residential roofer without having a license. The Order also concludes that Respondent performed negligently or in breach of contract so as to cause injury or harm to the public and demonstrated himself to be untrustworthy, financially irresponsible, or otherwise incompetent. In addition, the Order concludes that Respondent engaged in fraudulent, deceptive, or dishonest practices.<sup>48</sup>

26. The September 2015 Administrative Order also concludes that Respondent failed to include the required statutory warranty, exclusions, right to inspect, offer to repair and home warranty dispute resolution process information in his purchase agreement with Homeowner B in violation of Minn. Stat. §§ 327A.08(c), 326B.84 (2014), a conclusion not included in the March 2016 Amended Notice. The Amended Notice noted that the September 2015 Administrative Order included the underlying factual allegations at issue in this case and that the September 2015 Administrative Order was attached to and incorporated by reference into the November 12, 2015 Notice and Order for Hearing. The Amended Notice did not explicitly and separately incorporate the original Administrative Order by reference. Nonetheless, because Respondent's appeal was to the Administrative Order itself and because the Department stated at the outset of the hearing that it intended to continue to include the required statutory warranty as an issue, the Administrative Law Judge includes this issue as well. Because the Respondent had ample notice of the all the issues, and he defaulted, he is not prejudiced by continued inclusion of the statutory warranty issue.

27. The Administrative Order imposes a penalty of \$40,500 and orders the Respondent to "cease and desist" from violating the laws cited in the Order.<sup>49</sup> The Commissioner considered the following factors in determining the amount of the penalty: "the extent of deviation from compliance; whether the violations were willful; the gravity of the violations; the number of violations; whether there is a history of past violations; whether Respondent gained economic benefit in not complying with the law; and other factors as justice may require."<sup>50</sup>

28. Both the November 12, 2015 Notice and Order for Hearing and the March 22, 2016 Amended Notice provided, in part, that:

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

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<sup>47</sup> Ex. A at 1.

<sup>48</sup> Ex. A at 3-4.

<sup>49</sup> Ex. 1 at 1.

<sup>50</sup> Ex. 1 at 6.

allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.<sup>51</sup>

29. In addition, the Notice and Order states:

If the Administrative Law Judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the Commissioner may add to the amount of the penalty the costs charged to the Department by the Office of Administrative Hearings for the hearing.<sup>52</sup>

30. The Second Prehearing Order was served on the parties on February 10, 2016.<sup>53</sup> The Second Prehearing Order established June 6, 2016 as the discovery deadline. Witness lists and exhibits were required to be filed and served on August 5, 2016, and the hearing was to begin on August 15.<sup>54</sup> The Second Prehearing Order also contained default warning language similar to the language used in the Department's notices.<sup>55</sup>

31. Pursuant to a request from the Department, a Third Prehearing Conference was held on July 29, 2016. The purpose of the Third Prehearing Conference was for the parties to update the Administrative Law Judge regarding the status of the case.<sup>56</sup> As of the date of the Third Prehearing Conference, Respondent had engaged in no discovery, nor had he requested the Department to provide him with its investigative file in this matter. Nonetheless, during the Third Prehearing Conference, Respondent affirmed his intention to proceed with the contested case as scheduled. He stated he would work with counsel for the Department to obtain any documents he needed, and was not requesting a continuance.<sup>57</sup>

32. Respondent failed to file or serve any witness list or exhibits.<sup>58</sup>

33. In accordance with the Second Prehearing Order, a hearing was held on August 15, 2016 at the Office of Administrative Hearings. Christopher Kaisershot, Assistant Attorney General, appeared on behalf of the Department. In addition the Department's representative, Ms. Williams, appeared and provided testimony. Homeowner B also appeared and provided testimony, with the assistance of a court interpreter.<sup>59</sup>

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<sup>51</sup> Att. A at 4, Att. B, NOTICE AND ORDER FOR PREHEARING CONFERENCE at 4 (November 12, 2015).

<sup>52</sup> Att. A at 6, Att. B at 6.

<sup>53</sup> Att. D, SECOND PREHEARING ORDER AND CERTIFICATE OF SERVICE (February 10, 2016).

<sup>54</sup> Att. D at 1 and 3.

<sup>55</sup> Att. D at 3.

<sup>56</sup> Att. E, THIRD PREHEARING ORDER (July 22, 2016).

<sup>57</sup> Recording of July 29, 2016 Prehearing Conference.

<sup>58</sup> Recording of August 15, 2016 Hearing.

<sup>59</sup> Recording of August 15, 2016 Hearing.

34. At the hearing on August 15, 2016, Respondent was given sufficient time to appear, but there was no appearance by the Respondent. The Respondent did not contact the Administrative Law Judge or the Office of Administrative Hearings prior to the hearing to request a continuance or to state that he was unavailable.

35. At the hearing, counsel for the Department requested that the Administrative Law Judge allow the Department's witnesses to testify, even though the Respondent failed to appear, in order to make a record of the facts in the case. The Department's witnesses were allowed to testify. The Department's Exhibits numbered 1-51 were offered and admitted without objection at the start of the hearing.<sup>60</sup>

36. Counsel for the Department also requested that the Administrative Law Judge make a finding that the Respondent requested the hearing solely for purposes of delay or that the hearing request was frivolous. The Administrative Law Judge took the request under advisement.

37. Because Respondent failed to appear at the hearing or to contact the Administrative Law Judge prior to the hearing, the Respondent is in default.

38. Pursuant to Minn. R. 1400.6000 (2015), the allegations contained in the Amended Notice and Order for Prehearing Conference and in the Administrative Order are taken as true and incorporated by reference in these Findings of Fact.

Based upon these Findings of Fact, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against the Respondent under Minn. Stat. §§ 14.50, 326B.082, 326B.84 (2016).

2. The Department has complied with all applicable procedural requirements.

3. The Respondent received timely and proper notice of the August 15, 2016 hearing in this matter.

4. Minn. Stat. § 326B.802, subd. 11 (2014), defines "Residential building contractor" as "a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills as defined in this section. A residential building contractor may also contract or offer to contract with an owner to improve existing residential real estate."

5. Minn. Stat. § 326B.802, subd. 12 (2014), defines "Residential remodeler" as "a person in the business of contracting or offering to contract with an owner to improve

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<sup>60</sup> Recording of August 15, 2016 Hearing.

existing residential real estate by providing two or more special skills as defined in this section.”

6. Minn. Stat. § 326B.802, subd. 14 (2014), defines “Residential roofer” as “a person in the business of contracting, or offering to contract with an owner, to complete work on residential real estate in roof coverings, roof sheathing, roof weatherproofing and insulation, and repair of roof systems, but not construction of new roof systems.”

7. Minn. Stat. § 326B.805, subd. 1 (2014), provides, in relevant part, that:

A person who meets the definition of a residential building contractor as defined in section 326B.802, subdivision 11, must be licensed as a residential building contractor by the commissioner. A person who meets the definition of a residential remodeler as defined in section 326B.802, subdivision 12, must be licensed by the commissioner as a residential remodeler or residential building contractor. A person who meets the definition of a residential roofer as defined in section 326B.802, subdivision 14, must be licensed by the commissioner as a residential roofer, residential building contractor, or residential remodeler.

8. Minn. Stat. § 326B.805, subd. 3 (2014), provides, in relevant part, that no person “required to be licensed by subdivision 1 may act or hold themselves out as a residential building contractor, residential remodeler, [or] residential roofer, ... for compensation without a license issued by the commissioner.”

9. The Respondent violated Minn. Stat. § 326B.805, subs. 1 and 3 (2014) when he acted or held himself out to Homeowner B as a residential building contractor, residential remodeler, or residential roofer without having a license issued by the Department.

10. Minn. Stat. § 326B.082, subd. 1 (2014), provides in relevant part:

The commissioner may enforce all applicable law under this section. The commissioner may use any enforcement provision in this section, including the assessment of monetary penalties, against a person required to have a license, registration, certificate, or permit under the applicable law based on conduct that would provide grounds for action against a licensee, registrant, certificate holder, or permit holder under the applicable law.

11. The Respondent performed negligently or in breach of contract so as to cause injury or harm to the public in violation of Minn. Stat. § 326B.84 (4) when he failed to construct the home he agreed to build for Homeowner B in the July 2014 Amended Contract and Contract for Deed.

12. The Respondent demonstrated himself to be untrustworthy, financially irresponsible, or otherwise incompetent in violation of Minn. Stat. § 326B.84 (15) when he: a) took possession of the Property from Mr. and Mrs. S in exchange for one dollar; b) sold the Property, to which he did not have clear title, to Homeowner B, c) took \$53,000

from Homeowner B and failed to provide Homeowner B with a new home or anything of value; d) failed to return any of Homeowner B's money; and e) demolished the Property, to which Respondent did not have clear title.

13. The Respondent engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326B.84 (2) when he preyed on Mr. and Mrs. S., an elderly couple with financial problems, and when he purported to sell the Property, which he did not legally own, to Homeowner B, then held himself out as a licensed residential contractor and induced Homeowner B to pay \$53,000 in deposits for a new home that Respondent never began to build.

14. The Respondent failed to include a statutory warranty in a contract for the sale of a dwelling to be completed as required by Minn. Stat. § 327A.02.

15. The Administrative Order with Penalty should be affirmed.

16. Minn. Stat. § 326B.082, subd. 7 (2014), provides that the Commissioner may issue an administrative order to any person who the Commissioner determines has committed a violation of the applicable law.

17. It is appropriate and in the public interest to affirm the Administrative Order with Penalty issued November 12, 2015 to Respondent.

18. The Respondent's request for a hearing was frivolous because the request was not well grounded in fact or supported by existing law or a good faith extension of existing law.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### RECOMMENDATION

The Administrative Law Judge recommends that the Administrative Order with Penalty issued on September 9, 2015 be **AFFIRMED**, and the Commissioner consider adding the costs charged to the Department by the Office of Administrative Hearings for the hearing to the amount of the penalty.

Dated: September 8, 2016

  
LAURASUE SCHLATTER  
Administrative Law Judge

Reported: Digitally Recorded  
No transcript prepared

## NOTICE

Pursuant to Minn. Stat. § 326B.082, subd. 8(c) (2016), 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 (2016). 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 (2016), 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 (2016), this Report becomes a final decision.

## MEMORANDUM

The Department has requested that the Administrative Law Judge make a finding that the hearing was requested by the Respondent solely for purposes of delay or that the hearing request was frivolous. The Department seeks such a finding to allow the Commissioner to add the costs charged to the Department by the Office of Administrative Hearings for the hearing to the amount of the penalty.<sup>61</sup>

The Administrative Law Judge concludes that there is not adequate information in the record to show that the Respondent requested the hearing for purposes of delay. The record, however, demonstrates that the Respondent's request for a hearing was frivolous.

A frivolous claim is one that is without any reasonable basis in law or equity and could not be supported by a good faith argument for a modification or reversal of existing law.<sup>62</sup> Minnesota Rules of General Practice 9.06(b)(3) defines "frivolous litigant" to include:

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<sup>61</sup> *Id.* at 5 (citing Minn. Stat. § 326B.082, subd. 8(d)).

<sup>62</sup> *Maddox v. Department of Human Services*, 400 N.W.2d 136, 139 (Minn. Ct. App. 1987).

A person who institutes and maintains a claim that is not well grounded in fact and not warranted by existing law . . . or that is interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigating the claim.

In this case, the law is clear and the facts are not in dispute. The evidence in this case is overwhelming and uncontroverted that Respondent committed all of the violations the Department concluded he did in its Administrative Order of September 9, 2015. Among other things, he held himself out as a residential building contractor when he did not have a license, he acted in a deceitful and untrustworthy manner when he sold the Property which he did not own, he breached the Amended Contract with Homeowner B and his fiancé, failed to return the money he took for a home which he never built and did not include the statutory warranty in the contract for a new home.

The Respondent has a long history of similar behavior for which he has been criminally convicted and served prison time in Minnesota and other jurisdictions. This undermines the credibility of statements he made during prehearing conferences that he had explanations and defenses and a good reason to go to hearing. The Respondent insisted on a hearing, which is his right. He was given ample time to prepare for a hearing. Two weeks before the hearing he insisted that he wanted the hearing and did not require a continuance. Nonetheless, he never even requested the Department's investigative file and engaged in no discovery. He did not submit a witness list or any exhibits. The only conclusion that the Administrative Law Judge can draw is that the Respondent never intended to go to hearing, and that his appeal was frivolous.

The Respondent has not provided any facts or good faith legal arguments to demonstrate that his position is warranted by existing law or a reasonable extension of existing law.

For these reasons, the Administrative Law Judge concludes that the Administrative Order with Penalty was properly issued and the Respondent's request for a hearing was frivolous.

**L. S.**

Attachment A

RBC1508-00081/CMW

OAH Docket No. 8041902-32981

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

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In the Matter of the Administrative Order  
Issued to Thomas Joseph McManus

**NOTICE OF AMENDMENT,  
NOTICE AND ORDER FOR HEARING,  
AND AMENDED STATEMENT OF CHARGES**

TO: Thomas J. McManus  
3401 E. Medicine Lake Blvd.  
Plymouth, MN 55441

**NOTICE OF AMENDMENT**

THOMAS JOSEPH MCMANUS (“RESPONDENT”) is hereby notified that, under Minn. Rule 1400.5600, subp. 5 (2015), the Department of Labor and Industry (“Department”) has amended the Notice and Order for Prehearing Conference served on November 12, 2015. This amended pleading does not raise any additional allegations against Respondent and, instead, amends the caption and clarifies that this contested case proceeding only involves Respondent’s request for hearing to contest the underlying Administrative Order because Thomas Homes, Inc., did not submit a hearing request.

**NOTICE AND ORDER FOR HEARING**

IT IS ORDERED that, in accordance with the Second Prehearing Order, a two-day hearing will commence on August 15-16, 2016, at 9:30 a.m., at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Administrative Law Judge LauraSue Schlatter. Judge Schlatter’s legal assistant, Rachel Youness, may be reached at 651-361-7881 or [rachel.youness@state.mn.us](mailto:rachel.youness@state.mn.us). **All mail sent**

to the Administrative Law Judge assigned to this matter should be directed to P.O. Box 64620, St. Paul, MN 55164-0620.

The hearing will be conducted under the contested case procedures set out in chapter 14 of Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minnesota Rules chapter 1400 (2015), and Minn. Stat. §§ 326B.01 to 326B.085 (2014). A copy of these materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, or are available at [www.revisor.mn.gov](http://www.revisor.mn.gov).

The attorney handling this case for the Department is Assistant Attorney General Christopher M. Kaisershot, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134, (651) 757-1264. Mr. Kaisershot may be contacted to discuss discovery or informal disposition of this matter.

#### AMENDED STATEMENT OF CHARGES

1. On September 9, 2015, the Department served Respondent and Thomas Homes, Inc., with an Administrative Order. That order contains the underlying factual allegations at issue in this case and was attached to and incorporated by reference into the Notice and Order for Prehearing Conference. *See also* Minn. Stat. § 326B.082.

2. The order required Respondent and Thomas Homes, Inc., to cease and desist from acting or holding themselves out as residential building contractors, residential remodelers, or roofers, and imposed a \$40,500 civil penalty.

3. The order notified Respondent and Thomas Homes, Inc., that unless they requested a hearing within 30 days, it would become final by operation of law. *See also* Minn. Stat. § 326B.082, subs. 8, 12.

4. Respondent timely requested a hearing to contest the order and that request was attached to and incorporated by reference into the Notice and Order for Prehearing Conference.

5. The Department initially interpreted Respondent's hearing request as jointly submitted on behalf of himself and Thomas Homes, Inc. As such, when the Department commenced this proceeding, it listed Thomas Homes, Inc., as a party to the contested case proceeding.

6. At the January 5, 2016 prehearing conference, Respondent clarified that he submitted the hearing request only on his own behalf and not on behalf of Thomas Homes, Inc. Respondent further represented that he did not have any legal authority to request a hearing on behalf of Thomas Homes, Inc., and that he could not state where the ownership of Thomas Homes, Inc., vested at that time.

7. Thomas Homes, Inc., did not request a hearing to contest the order within 30 days after it was issued. By operation of law, as to Thomas Homes, Inc., the order became "a final order of the commissioner and will not be subject to review by any court or agency." Minn. Stat. § 326B.082, subd. 8(a).

8. Even though the order is final as to Thomas Homes, Inc., a hearing remains necessary to afford Respondent the opportunity to contest the allegations of violations.

9. This amendment is in the public interest.

## **VIOLATIONS**

### **Count I**

Respondent engaged in unlicensed residential building contractor, residential remodeler, or residential roofer activities. Minn. Stat. §§ 326B.082, subd. 7, 326B.805, subs. 1 and 3, 326B.81, and 326B.84(5) (2014).

### **Count II**

Respondent performed negligently or in breach of contract so to cause injury or harm to the public. Minn. Stat. §§ 326B.082, subd. 7, and 326B.84(4) (2014).

### **Count III**

Respondent demonstrated himself to be untrustworthy, financially irresponsible, or otherwise incompetent. Minn. Stat. §§ 326B.082, subd. 7, and 326B.84(15) (2014).

### **Count IV**

Respondent engaged in fraudulent, deceptive, or dishonest practices. Minn. Stat. §§ 326B.082, subd. 7, and 326B.84(2) (2014), and Minn. R. 2891.0040, subp. 1C and 1D (2015).

### **ADDITIONAL NOTICE**

1. 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 its proposed action may be upheld.

2. If any party has good cause for requesting a delay of the hearing or any prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the scheduled date. A copy of the request must be served on the other party.

3. Any party intending to participate as a party in this proceeding must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Department's attorney. A Notice of Appearance form is enclosed.

4. All parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties are entitled to the issuance of subpoenas to compel witnesses to attend the hearing. The parties will have the opportunity to be heard orally, to present evidence and cross-examine witnesses, and to submit evidence and argument. Ordinarily the hearing is tape-recorded. The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the hearing should bring all evidence bearing on the case, including any records or other documents. Be advised that if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (2014).

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the hearing shall be made in writing to the Administrative Law Judge pursuant to Minn. Rule 1400.7000 (2015). A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at [www.oah.state.mn.us](http://www.oah.state.mn.us) or by calling 651-361-7900.

7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly. "No matter shall be ordered for mediation if the agency or any party is opposed." Minn. Rule 1400.5950, subp. 3C (2015).

8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court. A Guide to Participating in Contested

Case Proceedings at the Office of Administrative Hearings is available at *www.oah.state.mn.us* or by calling 651-361-7900.

9. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the administrative law judge must be promptly notified. To arrange for an accommodation or an interpreter, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, Minnesota 55164-0620, or may call (651) 361-7900 (voice) or (651) 361-7878 (TTY).

10. If the Administrative Law Judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the Commissioner may add to the amount of the penalty the costs charged to the Department by the Office of Administrative Hearings for the hearing. Minn. Stat. § 326B.082, subd. 8(d) (2014).

KEN B. PETERSON  
Commissioner

Dated: 3/22/16

BY:   
CHARLIE DURENBERGER  
Director of Licensing and Enforcement

Construction Codes and Licensing Division  
Department of Labor and Industry  
443 Lafayette Road North  
Saint Paul, Minnesota 55155  
Telephone: (651) 284-5069

Attachment B

RECEIVED

RBC1508-00081/CMW

2015 NOV 13 AM 7: 33

OAH Docket No. 80-1902-32981

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

In the Matter of the Administrative Order  
Issued to Thomas Joseph McManus,  
individually, and d/b/a Thomas Homes, Inc.

**NOTICE AND ORDER FOR  
PREHEARING CONFERENCE**

TO: Thomas J. McManus  
Washington County Jail  
W.C.J. 7836  
15015 62<sup>nd</sup> Street North  
P.O. Box 3801  
Stillwater, MN 55082

Thomas J. McManus  
Thomas Homes, Inc.  
2355 Highway 36 West  
Ste. 400  
Roseville, MN 55113

Thomas J. McManus  
Thomas Homes, Inc.  
2175 Ivy Street  
Maplewood, MN 55119

Thomas J. McManus  
Thomas Homes, Inc.  
1687 Wood Lane Drive  
Woodbury, MN 55125

THOMAS JOSEPH MCMANUS, INDIVIDUALLY, AND D/B/A THOMAS HOMES, INC. ("RESPONDENTS") ARE HEREBY NOTIFIED that, based on his request for a hearing received on October 13, 2015, the Department of Labor and Industry ("Department") has initiated this action to determine whether the Administrative Order issued to Respondents on September 9, 2015, should be vacated, modified, or made permanent.

IT IS HEREBY ORDERED that a prehearing conference will be held at 10:30 a.m. on January 5, 2016, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Administrative Law Judge LauraSue Schlatter. Judge Schlatter's legal assistant, Rachel Youness, may be reached at 651-361-7881 or *rachel.youness@state.mn.us*. **All mail sent**

**to the Administrative Law Judge assigned to this matter should be directed to P.O. Box 64620, St. Paul, MN 55164-0620.**

The purposes of the prehearing conference include establishing the hearing date and location, setting scheduling deadlines in advance of the hearing for conducting discovery and exchanging exhibit and witness lists, simplifying the issues to be determined, considering whether an interpreter or other accommodation is needed, and, if possible, reaching a settlement without the necessity for further hearing. *See* Minn. R. 1400.6500.

The hearing, which may be scheduled at the prehearing conference, will be conducted under the contested case procedures set out in chapter 14 of Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minnesota Rules chapter 1400 (2013), and Minn. Stat. §§ 326B.01 to 326B.085 (2014). A copy of these materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, or are available at [www.revisor.mn.gov](http://www.revisor.mn.gov). Copies of the rules are also available at [www.oah.state.mn.us](http://www.oah.state.mn.us).

The attorney handling this case for the Department is Assistant Attorney General Christopher M. Kaisershot, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134, (651) 757-1264. Mr. Kaisershot may be contacted to discuss discovery or informal disposition of this matter.

## ALLEGATIONS

1. On September 9, 2015, the Department served Respondents with an Administrative Order (“Order”), which is attached hereto and incorporated by reference. *See also* Minn. Stat. § 326B.082 (2014).<sup>1</sup>

2. The Order required Respondents to cease and desist from acting or holding himself out as a residential building contractor, residential remodeler, or roofer, and imposed a \$40,500 civil penalty.

3. The Order notified Respondents that, unless they requested a hearing within 30 days, the Order would become a final order of the Commissioner. *See also* Minn. Stat. § 326B.082, subs. 8 and 12 (2014).

4. On October 12, 2015, a post-mark was affixed to the envelope enclosing Respondents’ request for a hearing to contest the Order, which along with a copy of the envelope is attached hereto and incorporated by reference.<sup>2</sup>

5. This Order is in the public interest.

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<sup>1</sup> The Department initially served an order on September 1, 2015, although the Department subsequently confirmed that Mr. McManus was incarcerated in the Washington County Jail. As such, the Department served McManus in jail on September 9, 2015.

<sup>2</sup> If the Administrative Law Judge determines that Respondents’ request for a hearing was untimely and, thus, that the Office of Administrative Hearings lacks subject matter jurisdiction, then the Order is “a final order of the commissioner and will not be subject to review by any court or agency.” Minn. Stat. § 326B.082, subd. 8.

## **VIOLATIONS**

### **Count I**

As set forth in the attached Order, Respondents engaged in unlicensed residential building contractor, residential remodeler, or residential roofer activities. Minn. Stat. §§ 326B.082, subd. 7, 326B.805, subds. 1 and 3, 326B.81, and 326B.84(5) (2014).

### **Count II**

As set forth in the attached Order, Respondent performed negligently or in breach of contract so to cause injury or harm to the public. Minn. Stat. §§ 326B.082, subd. 7, and 326B.84(4) (2014).

### **Count III**

As set forth in the attached Order, Respondent demonstrated himself to be untrustworthy, financially irresponsible, or otherwise incompetent. Minn. Stat. §§ 326B.082, subd. 7, and 326B.84(15) (2014).

### **Count IV**

As set forth in the attached Order, Respondent engaged in fraudulent, deceptive, or dishonest practices. Minn. Stat. §§ 326B.082, subd. 7, and 326B.84(2) (2014), and Minn. R. 2891.0040, subp. 1C and 1D (2013).

## **ADDITIONAL NOTICE**

1. 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 Respondent is 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.

2. If any party has good cause for requesting a delay of the hearing or any prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the scheduled date. A copy of the request must be served on the other party.

3. Any party intending to participate as a party in this proceeding must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Department's attorney. A Notice of Appearance form is enclosed.

4. All parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties are entitled to the issuance of subpoenas to compel witnesses to attend the hearing. The parties will have the opportunity to be heard orally, to present evidence and cross-examine witnesses, and to submit evidence and argument. Ordinarily the hearing is tape-recorded. The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the hearing should bring all evidence bearing on the case, including any records or other documents. Be advised that if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (2014).

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the hearing shall be made in writing to the Administrative Law Judge pursuant to Minn. Rule 1400.7000 (2013). A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at [www.oah.state.mn.us](http://www.oah.state.mn.us) or by calling 651-361-7900.

7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly. "No matter shall be ordered for mediation if the agency or any party is opposed." Minn. Rule 1400.5950, subp. 3C (2013).

8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court. A Guide to Participating in Contested Case Proceedings at the Office of Administrative Hearings is available at [www.oah.state.mn.us](http://www.oah.state.mn.us) or by calling 651-361-7900.

9. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the administrative law judge must be promptly notified. To arrange for an accommodation or an interpreter, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, Minnesota 55164-0620, or may call (651) 361-7900 (voice) or (651) 361-7878 (TTY).

10. If the Administrative Law Judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the Commissioner may add to the amount of the penalty the costs charged to the Department by the Office of Administrative Hearings for the hearing. Minn. Stat. § 326B.082, subd. 8(d) (2014).

KEN B. PETERSON  
Commissioner

Dated: 11/12/15

BY:   
\_\_\_\_\_  
CHARLIE DURENBERGER  
Director of Licensing and Enforcement

Construction Codes and Licensing Division  
Department of Labor and Industry  
443 Lafayette Road North  
Saint Paul, Minnesota 55155  
Telephone: (651) 284-5069

Attachment C

**AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL**

**Re: *In the Matter of Administrative Order Issued to Thomas Joseph McManus***  
**OAH File No. 80-1902-32981**

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF RAMSEY )

ANN KIRLIN, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on March 21, 2016, she caused to be served the Notice of Amendment and Order for Hearing, and Amended Statement of Charges, by depositing in the first class mail at the City of St. Paul, State of Minnesota a true and correct copy thereof, properly enveloped with postage prepaid addressed to all persons at the addresses indicated below:

Thomas J. McManus  
3401 E. Medicine Lake Blvd., #149  
Plymouth, MN 55441

Thomas Homes, Inc.  
2006 Valley Creek Office Centre  
1687 Wood Lane Dr.  
Woodbury, MN 55125

Thomas Homes, Inc.  
3401 E. Medicine Lake Blvd., #149  
Plymouth, MN 55441

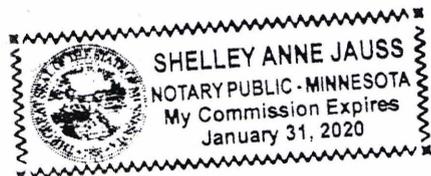


ANN KIRLIN

Subscribed and sworn to before me  
this 21st day of March, 2016.



NOTARY PUBLIC



STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Administrative Order  
Issued to Thomas Joseph McManus,  
Individually, and d/b/a Thomas Homes

**SECOND  
PREHEARING ORDER**

This matter came before Administrative Law Judge LauraSue Schlatter for a Second Prehearing Conference on February 5, 2016.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). Thomas Joseph McManus appeared on his own behalf (Respondent) and no appearance was made by Thomas Homes.<sup>1</sup>

Based upon the submissions of the parties and the hearing record,

**IT IS HEREBY ORDERED:**

1. The period for discovery shall close on **Monday, June 6, 2016**. All discovery shall be completed by that date. The parties are encouraged to resolve any discovery disputes between themselves but may request a telephone conference if their efforts are unsuccessful. To obtain copies of the agency's file, a party should make a written demand pursuant to Minn. R. 1400.6700 (2015). The parties should not copy the Administrative Law Judge on discovery requests or responses unless such documents are the subject of a filed motion.

2. The deadline for submitting any dispositive motions shall be on **Monday, June 20, 2016**. Responses to dispositive motions, if any, must be served and filed by **Tuesday, July 5, 2016**.

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<sup>1</sup> During the January 5, 2016 First Prehearing Conference, Respondent McManus asserted that he could not state where the ownership of Thomas Homes is vested at this time. The Department subsequently made inquiries and was unable to contact current or former owners of Thomas Homes. At the Second Prehearing Conference, counsel for the Department stated that the Department intends to amend the Notice and Order for Hearing in this matter so that it applies only to Mr. McManus. However, at the time of the Second Prehearing Conference, it had not done so. Therefore, the caption of this prehearing order reflects the caption of the original Notice and Order for Prehearing Conference.

The Administrative Law Judge requests that all memoranda submitted with motions for summary disposition comply with the format set forth in Minn. Gen. R. Prac. 115.03(d), and include, most importantly, a numbered recital by the moving party of all material facts as to which there is no genuine dispute, along with a specific citation to that part of the record supporting each fact. The party opposing the motion shall, in like manner, make a recital of any material facts claimed to be in dispute.

3. A hearing, if any, on any dispositive motions shall be held no later than **Friday, July 22, 2016**. All dispositive motions shall be heard by that date, if a hearing is requested. Generally, dispositive motions are made by written submissions without oral argument. However, upon request of a party, a motion hearing can be scheduled. Motion hearings can be conducted by telephone conference or in person. If you are requesting a motion hearing, please identify what type of hearing you are requesting (e.g., in person or by telephone). Unless a hearing is requested, the motion will be decided based upon the parties' written submissions. Any hearing on a motion shall be scheduled to be heard after the completion of the briefing deadlines for both parties, and by the dispositive motion hearing deadline set forth herein. The procedure for motion practice is set forth in Minn. R. 1400.6600 (2015).

4. The deadline to request subpoenas for the attendance of witnesses or the production of documents shall be **Friday, August 5, 2016**. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000 (2015). A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at <http://mn.gov/oah/self-help/administrative-law-overview/subpoenas.jsp>.

5. Hearings are ordinarily digitally recorded. A digital recording of the hearing can be obtained for a nominal fee by a party who makes a written request. However, transcripts of the hearing are not provided unless the cost for such transcription is paid in advance by the party making the request. If a party wishes to have a court reporter at the hearing, written notice shall be given to the Office of Administrative Hearings (Attention: Docket Coordinator) no later than **Friday, August 5, 2016**. See Minn. R. 1400.7400, subp. 2 (2015). The cost for the court reporter and any requests for transcripts shall be borne by the party making the request. If a transcript is requested, the party requesting such transcript shall also be required to provide a copy of the transcript to the Administrative Law Judge.

6. By **4:30 p.m. on Friday, August 5, 2016**, the parties shall exchange and file with this Office their proposed pre-labeled exhibits, an index of the proposed exhibits, and their witness lists. See Minn. R. 1400.6950 (2015). The Department shall label its exhibits sequentially using numbers 1 through 99. The Respondent shall label his exhibits sequentially beginning with the number 100.

7. All documents required to be filed with the Office of Administrative Hearings, or which a party wishes to make part of the record in this matter, may be filed with the Office of Administrative Hearings in any one of the following ways: (1) **by**

**e-Filing** through the Office of Administrative Hearings' e-Filing system at <http://mn.gov/oah/forms-and-filing/efiling/>; (2) **by mail**; (3) **by fax**; or (4) **by personal delivery**, pursuant to Minn. R. 1400.4440 (2015). Attorneys representing government agencies are encouraged to e-File. Any party filing proposed hearing exhibits using the e-Filing system or by fax shall also provide a paper copy of the proposed hearing exhibits to the Administrative Law Judge on the same date the exhibits are faxed or e-Filed. Filings are effective on the date the Office of Administrative Hearings receives the filing. Minn. R. 1400.5550.

8. To the extent possible, the parties shall enter into prehearing stipulations regarding the facts involved in the hearing and the foundation for anticipated exhibits. Any party objecting to the foundation for any written exhibit shall notify the offering party and the judge in writing by **Wednesday, August 10, 2016**.

9. A hearing in this matter will be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101, on **Monday, August 15** and **Tuesday, August 16, 2016**, beginning at **9:30 a.m.** The hearing shall be scheduled for **two** consecutive days.

10. The parties have requested accommodation for a disability or the appointment of an interpreter. Please advise the Office of Administrative Hearings in writing by **Friday, July 15, 2016** if either an accommodation or an interpreter is needed.

11. Pursuant to Minn. R. 1400.7500 (2015), requests for continuances of a hearing shall be granted only upon a showing of good cause. A request for a continuance filed within five (5) business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained or unless good cause is shown.

12. Under Minn. R. 1400.6000 (2015), the failure of a party to appear at a prehearing conference or hearing without the prior consent of the Administrative Law Judge shall be considered a default by that party. Upon default, the allegations contained in the Notice and Order for Prehearing Conference or Hearing may be accepted as true, and the Department proposed action may be upheld.

13. If the matter is resolved prior to hearing, please provide written notice to the Office of Administrative Hearings immediately, and provide notice to the Administrative Law Judge by contacting Docket Coordinator Cari Snaza at [cari.snaza@state.mn.us](mailto:cari.snaza@state.mn.us) or (651) 361-7906 or Judge Schlatter's legal assistant at [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us) or (651) 361-7911.

Dated: February 10, 2016



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LAURASUE SCHLATTER  
Administrative Law Judge

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
PO BOX 64620  
600 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55164

**CERTIFICATE OF SERVICE**

In the Matter of the Administrative Order Issued to Thomas Joseph McManus, Individually, and d/b/a Thomas Homes	OAH Docket No.: 80-1902-32981
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Katie Lin, certifies that on February 10, 2016 she served the true and correct **PROTECTIVE ORDER** and **SECOND PREHEARING ORDER** by courier service or by placing it in the United States mail with postage prepaid, addressed to the following individuals:

Christopher M. Kaisershot  
Minnesota Attorney General's Office  
445 Minnesota St Ste 1800  
Saint Paul, MN 55101

Thomas J. McManus  
3401 E Medicine Lake Blvd  
Plymouth, MN 55441

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Administrative Order  
Issued to Thomas Joseph McManus

**THIRD PREHEARING ORDER**

This matter is scheduled for a contested case hearing before Administrative Law Judge LauraSue Schlatter beginning on August 15, 2016.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). Thomas J. McManus (Respondent) represents himself without legal counsel.

On July 21, 2016, counsel for the Department contacted the Administrative Law Judge and requested a telephone prehearing status conference.

Based upon the submissions of counsel and the hearing record,

**IT IS HEREBY ORDERED:**

1. A prehearing status conference in this matter will be held on **Friday, July 29, 2016 at 9:30 a.m.** via telephone conference. The parties may join the telephone conference by calling **1-888-742-5095** and when prompted, enter conference code **805-596-0270#**. The purpose of the prehearing conference will be for the parties to update the Administrative Law Judge regarding the status of the case.

2. Pursuant to Minn. R. 1400.7500 (2015), requests for continuances of a hearing shall be granted only upon a showing of good cause. A request for a continuance filed within five (5) business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained or unless good cause is shown.

3. Under Minn. R. 1400.6000 (2015), the failure of a party to appear at a prehearing conference or hearing without the prior consent of the Administrative Law Judge may be considered a default by that party. Upon default, the allegations contained in the Notice and Order for Prehearing Conference or Hearing may be accepted as true, and the Department's proposed action may be upheld.

4. If the matter is resolved prior to the prehearing conference or hearing, please provide written notice to the Office of Administrative Hearings immediately, and

provide notice to the Administrative Law Judge by contacting Docket Coordinator Cari Snaza at [cari.snaza@state.mn.us](mailto:cari.snaza@state.mn.us) or (651) 361-7906 or Judge Schlatter's legal assistant at [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us) or (651) 361-7911.

Dated: July 22, 2016

A handwritten signature in black ink, appearing to read "Laurasue Schlatter", written in a cursive style.

---

LAURASUE SCHLATTER  
Administrative Law Judge

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
PO BOX 64620  
600 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55164

**CERTIFICATE OF SERVICE**

In the Matter of the Administrative Order Issued to Thomas Joseph McManus	OAH Docket No.: 80-1902-32981
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Kendra McCausland certifies that on July 22, 2016 she served the true and correct **THIRD PREHEARING ORDER** by electronic mail, as indicated below, addressed to the following individuals:

Christopher M. Kaisershot  
Minnesota Attorney General's Office  
[Christopher.Kaisershot@ag.state.mn.us](mailto:Christopher.Kaisershot@ag.state.mn.us)

Thomas J. McManus  
[tmcmanus.maco@outlook.com](mailto:tmcmanus.maco@outlook.com)

Kendra McCausland certifies that on July 25, 2016 she served the true and correct **THIRD PREHEARING ORDER** by placing it in the United States mail with postage prepaid, as indicated below, addressed to the following individuals:

Christopher M. Kaisershot  
Minnesota Attorney General's Office  
445 Minnesota St Ste 1800  
Saint Paul, MN 55101

Thomas J. McManus  
3401 E Medicine Lake Blvd  
Plymouth, MN 55441