OAH 5-1902-34997

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order Issued to Myers Construction Services, LLC

CONTINUANCE ORDER

This matter came before Administrative Law Judge Jim Mortenson on the Department of Labor and Industry's (Department) Motion to Stay Proceedings (Motion), filed October 5, 2018. Myers Construction Services (Respondent) filed a Response opposing the Motion on October 19, 2018.

Anthony de Sam Lazaro, Assistant Attorney General, represents the Department. Michelle Christensen, HKM, P.A., represents Respondent.

Pursuant to Minn. R. 1400.5500 and .7500 (2017) and for the reasons discussed in the Memorandum below,

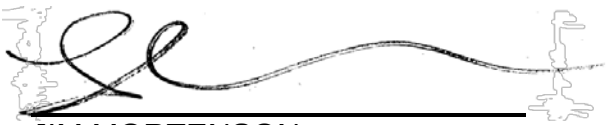
IT IS HEREBY ORDERED:

1. The Motion to stay proceedings is **GRANTED**.

2. A prehearing conference will be held on **Wednesday, December 19, 2018,** at **9:30 a.m.**, via telephone. At that time, the parties are directed to dial **1-888-742-5095** and enter conference code **685 684 1864#**.

3. **Pursuant to Minn. R. 1400.6000 (2017), failure to appear at a prehearing or the hearing will result in a default and the allegations of the Notice and Order for Prehearing Conference may be taken as true. This may result in the matter being disposed of adversely to the defaulting party.**

Dated: October 24, 2018



JIM MORTENSON
Administrative Law Judge

MEMORANDUM

I. Arguments

The Department requests that the administrative hearing scheduled to begin on December 19, 2018, be continued pending the outcome of a related civil lawsuit. The lawsuit was filed in January 2018 by the couple that filed the administrative complaint about the Respondent with the Department.[1] According to the Department, the administrative matter and the lawsuit involve the same factual and legal disputes. The Department also argues that the timing of the civil trial and final decision making of the Commissioner following the administrative hearing will overlap, resulting in possible inconsistent determinations. Thus, according to the Department, the administrative proceeding should be stayed pending the outcome of the civil trial to promote judicial economy.

Respondent objects to a continuance of the administrative hearing. Respondent argues that a stay of these proceedings will be prejudicial to the Respondent because of the time and expense expended in conducting discovery and preparing for December's hearing. Respondent argues that the findings in the administrative proceeding are independent of the civil action, that this has been the Department's position until now, and that if the issues can only be determined by the district court, then the administrative matter should be dismissed.

The Administrative Law Judge agrees with the Department that judicial economy will be served by continuing the administrative matter until the outcome of the civil case. Further, a continuance will not prejudice Respondent.

II. Analysis

"Requests for a continuance of a hearing shall be granted upon a showing of good cause."[2] The good cause in this case is the idea that one trial or hearing is more economical than two. It is true, as Respondent points out, that the administrative process and the civil court process are entirely independent and distinct. In the civil suit, the Plaintiffs are seeking damages.[3] In the administrative matter, Respondent has appealed the revocation of its residential building construction license and a civil fine, which was based on the facts concerning Respondent's work for the Plaintiffs in the civil suit.[4] Since the factual underpinnings of both cases are largely identical, they matter a great deal. The law is not clear on which tribunal must or should proceed first in this circumstance. The Administrative Law Judge determines that two separate tribunals examining and making determinations about the same set of facts at nearly the same time is a situation that should be avoided where appropriate and practical.

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[1] Exhibit (Ex.) B.
[2] Minn. R. 1400.7500.
[3] Ex. B.
[4] Ex. A.

Respondent's argument that a stay of the administrative matter will be prejudicial to it is unavailing. Respondent's time and expense spent in discovery will have been necessary, regardless of the civil suit between Respondent and the Plaintiffs. Respondent's appeal of the Licensing Order, dated October 12, 2017, stayed that order.[5] So a delay in the evidentiary hearing does not prevent Respondent from operating. Further, not providing Respondent an opportunity to create an evidentiary record in advance of the civil trial is not prejudicial to anyone. Respondent will still be entitled to an administrative hearing following the outcome of the civil trial. However, the process will likely be more concise because there will be facts to apply to the administrative matter that will not require litigation. Any material facts pertinent to the administrative matter, which are not established in the district court, will need to be litigated if not otherwise stipulated to. This is the essence of judicial economy and is in no way prejudicial to Respondent.

III. Conclusion

The Administrative Law Judge finds good cause to continue the evidentiary hearing scheduled to begin on December 19, 2018. The good cause is based on the pending civil trial that will likely make findings of fact relevant to the administrative proceeding. Conflicting findings of fact do not serve either party in the administrative matter and negatively impact judicial economy. A prehearing conference will be convened at the time the evidentiary hearing was to begin for the purpose of establishing a new administrative hearing schedule, to the extent practicable.

J. R. M.

[5] Ex. A; Minn. Stat. § 326B.082, subd. 11(c) (2018).