OAH 82-1902-35248

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Administrative Order Issued to Moses Wazwaz, Individually, Allstate Construction, Inc., and A&K Construction Services, Inc.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

This matter came before Administrative Law Judge Barbara J. Case for a hearing on December 11 and 12, 2018. The record closed on January 28, 2019, upon the filing of the parties' closing arguments.

Christopher Kaisershot appeared on behalf of the Minnesota Department of Labor and Industry (Department). Thomas J. Radio, Felhaber Larson, appeared on behalf of Moses Wazwaz (Wazwaz), Allstate Construction, Inc. (ACI) and A&K Construction, Inc. (A&K) (together, Respondents).

STATEMENT OF THE ISSUES

1. Did Respondents hold themselves out as residential building contractors, residential remodelers, or residential roofers without a license issued by the Department in violation of Minn. Stat. §§ 326B.082, subds. 1, 7; 326B.805, subds. 1-3, and 326B.84 (5) (2018)?

2. Did Respondents engage in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. §§ 326B.082, subds. 1, 7; 326B.84 (2), (5); Minn. R. 2891.0040, subps. 2C-D (2017)?

3. Did Respondents violate the May 23, 2017 consent order by acting or holding themselves out as residential building contractors, residential remodelers, or residential roofers in violation of Minn. Stat. §§ 326B.082, subds. 1, 7; 326B.805, subds. 1, 3, and 326B.84 (5)?

4. Did Respondents provide incomplete information to the Commissioner of the Department (Commissioner) and refuse a reasonable inspection of records in violation of Minn. Stat. §§ 326B.082, subds. 1,2(b), 7, 326B.84 (14) (2018)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department met its burden to establish that the Administrative Order with Penalty issued on March 16, 2018, should be **AFFIRMED.**

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

FINDINGS OF FACT

I. Background

1. Respondents have never been licensed by the Department in any capacity.[1]

2. In 2016, the Department investigated Wazwaz and ACI[2] based upon allegations that the two entities[3] had acted as a residential building contractor or residential remodeler without a license.[4]

3. During the investigation, the Department determined that Wazwaz is unqualified to be a licensed contractor in Minnesota[5] because his financial history includes judgments entered against him, as well as a criminal history that disqualifies him from becoming licensed as a residential contractor, residential remodeler or licensed roofer.[6]

4. On August 10, 2016, the Department issued an Administrative Order to ACI and Wazwaz, or those entities doing business under any other name, for unlicensed activity.[7]

5. Wazwaz requested a contested case hearing on the 2016 Administrative Order. Prior to the date set for the contested case hearing, he signed a "consent to entry of order" on May 23, 2017.[8] As part of this settlement, Wazwaz and ACI stipulated that Wazwaz, acting on his own behalf and on behalf of ACI, violated the laws as alleged in the Administrative Order. The Department stayed a $7,000 penalty on the condition that Wazwaz and ACI comply with a cease and desist order prohibiting them from acting as or holding themselves out as a residential building contractor, residential

[1] Hearing Transcript Volume (Tr. Vol.) II at 183-84 (Gartland).
[2] ACI is a business name for a corporation registered with the Secretary of State. The name was filed on April 26, 2012 and renewed on December 31, 2017. The registered office address for ACI is 3550 Lexington Ave. N. Suite 106, Shoreview. Wazwaz is the Chief Executive Officer. *See* Ex. 3 (Business Record Details for Allstate Construction, Inc.).
[3] A&K, one of the respondents in the present case, did not exist as of this date.
[4] Ex. 4 at DLI 142.
[5] Tr. Vol. II at 185 (Gartland).
[6] *Id.* at 185-187 (Gartland).
[7] Ex. 4 (Consent Order); Tr. Vol. II at 185 (Gartland).
[8] Ex. 4 at DLI 143.

remodeler, or residential roofer in the state of Minnesota, and Wazwaz and ACI agreed to cease and desist from such activities.[9]

II. The Partnership

6. On June 11, 2017, shortly after Wazwaz and ACI signed the consent order with the Department, Respondents discussed a joint venture to provide storm damage repair with Kaleem and Naomi Muhammad of KIEN, Inc. (KIEN)[10].[11] Wazwaz, ACI, and the Muhammads discussed forming a new company, A&K, to contract with homeowners to repair storm-damaged homes.[12]

7. KIEN Inc. is a general contracting business owned in equal parts by Naomi Muhammad and her husband, Kaleem Muhammad.[13] KIEN, Inc. was licensed by the Department as a residential building contractor from April 1, 2014 until March 21, 2018.[14] KIEN's qualified individual, a position that requires qualifications and registration with the state, is Ms. Muhammad.[15]

8. KIEN has been licensed by the Department as a general contractor since May 2, 2014.[16] Prior to June 2017, KIEN Inc. focused on "flipping houses" and had not been involved with storm damage repair contracts.[17]

9. During the discussions between Respondents, the Muhammads and KIEN, Wazwaz represented to the Muhammads that he had previously completed storm damage repair with a different company.[18]

10. Ms. Muhammad did not want to enter into a business relationship with Respondents and refused to allow her qualifying credential to be used to obtain a license for the new entity, A&K.[19] Mr. Muhammad entered into an oral agreement with

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[9] *Id.*

[10] KIEN was originally named as a respondent in this matter, but prior to the hearing, the Department resolved its case against the Muhammads and KIEN. The Department called Naomi Muhammad as a witness at the hearing. Tr. Vol. I at 97-159 (N. Muhammad). Additionally, the Department originally named Jeffery Taylor as a respondent in this matter, but the Department resolved this matter as regards Mr. Taylor prior to the hearing and he did not appear as a witness. *See* Consent Order filed with the Office of Administrative Hearings on September 6, 2018.

[11] Tr. Vol. I at 98 (N. Muhammad); Ex. 9 (Response to Wayne Gartland from Naomi Muhammad, Dec. 21, 2017).

[12] Tr. Vol. I at 98 (N. Muhammad).

[13] In the transcript and documents, Kaleem Muhammad is sometimes referred to as Kal.

[14] Ex. 1 (Department's license details). The license expired on March 21, 2018 because Ms. Muhammad did not renew the license.

[15] Tr. Vol. I at 115 (N. Muhammad); *See* Minn. Stat. § 326B.805, subd. 4: "The examination and education requirements for licensure…must be fulfilled by a qualifying person designated by the potential licensee."

[16] Ex. 1 (License for KIEN, Inc).

[17] Tr. Vol. I at 97 (N. Muhammad).

[18] Ex. 9 at DLI 183.

[19] Tr. Vol. II at 268 (Wazwaz); *see also* Tr. Vol. I at 98-99 (N. Muhammad), 133-34 (N. Muhammad); Minn. Stat. §§ 326B.805, subd. 4, .821, subd. 2, .825 (2018) (discussing the role and requirements of qualifying persons for licensees).

Wazwaz to form A&K and to use KIEN's license to obtain building permits to perform storm damage repair work.[20]

5. Wazwaz told the Muhammads that an attorney advised him that creating a separate business entity was the best way to go about the venture. On July 3, 2017, Wazwaz registered A&K Construction Services, Inc. as a Minnesota business name with a registered office address of 1730 New Brighton Boulevard,[21] the same address listed with the Secretary of State as the address for ACI.[22] Wazwaz also opened a bank account for A&K of which he ultimately took complete control.[23]

11. In July of 2017, KIEN and ACI entered into a Joint Venture Agreement.[24] Ms. Muhammad drafted this agreement in an attempt to protect KIEN, to establish the division of duties between the Wazwaz and her husband, and to address disagreements that had occurred between them about handling customers, crews, receivables and payables.[25] Ms. Muhammad drafted the agreement in July, but the parties backdated it to June 11, 2017.[26]

12. At the time they entered into the Joint Venture Agreement, the Muhammads were aware that Respondents did not have a license but were unaware of the consent order that Wazwaz and ACI had with the Department.[27] The Muhammads were also aware that only KIEN would be able to pull permits for the work done under their license.[28] KIEN applied for all of the building permits under the joint venture.[29]

13. The Joint Venture Agreement states:

- The purpose of the joint venture was to acquire signed agreements for the performance of storm damage repair work. All agreements were to be submitted to the main office.

- "Production will take place with Kaleem and/or Moses. Production is the start to finish of the work (storm damage repair)."

- "Allstate Construction's and KIEN INC's are working together to produce sales and execute the storm damage repair that is necessary for each client."

- "All decisions must be made in agreement by both parties."

[20] Tr. Vol. I at 99-101 (N. Muhammad); Tr. Vol. II at 250, 269 (Wazwaz).
[21] Ex. 2 (Secretary of State business details for A&K, Inc.).
[22] Ex. 3 (Secretary of State business record details for Allstate Construction, Inc.).
[23] Ex. 9 at DLI 183.
[24] *Id.*
[25] *Id.* at DLI 183-186; Tr. Vol. I at 99 (N. Muhammad).
[26] Ex. 9 at DLI 185-86 (Joint Venture Agreement labeled Exhibit A of Ms. Muhammed's response to Mr. Gartland).
[27] Tr. Vol. I at 136 (N. Muhammad).
[28] *Id.*
[29] *Id.* at 141 (N. Muhammad).

- All profits will be split 50/50. Changes to this agreement must be in writing and agreed to by both parties. Either party may terminate the agreement at any time.

- "KIEN INC will pull the permits for the work. Only officers of KIEN INC (Kalem [sic] and Naomi Muhammad) are allowed to pull the permit. No others are authorized."

- "This contract takes effect on the day of 2017 Hail Storm that happened on 6/11/2017."[30]

14. Advertising for the joint venture included a glossy 11 X 4 inch doorknob hanger advertisement and a glossy 8.5 x 11 inch folder. On both pieces, the words "Allstate Construction" are prominently displayed. The word "KIEN" appears inconspicuously, with KIEN's license number, in the upper left of the door hanger. The words "A&K Construction" do not appear on the advertising pieces.[31] The website given on the door hanger is for ACI and Respondents' phone number is on both pieces. Both pieces advertise ACI as a construction firm.[32]

15. On June 29, 2017, Mr. Muhammad and Wazwaz went to the Bank of America to open a bank account for A&K. While at the bank they also jointly filled out a Secretary of State's form titled "Minnesota Business Corporation/Articles of Incorporation and both men signed and dated the form. On June 30, 2017, Wazwaz filed the same form with the Secretary of State's office but with only his name and signature on the document. This document, which incorporated A&K, gave the registered office and agent as 1730 New Brighton Blvd, Suite 104, Respondents' business address.[33]

16. Initially, both Mr. Muhammed and Respondents had access to A&K's bank account. A few weeks or a few months later, however, Respondents removed Mr. Muhammad from the account.[34] Mr. Muhammad discovered that he did not have access to the bank account in approximately October or November 2017.[35]

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[30] Ex. 9 at DLI 185-86 (Joint Venture Agreement labeled Exhibit A of Ms. Muhammed's response to Mr. Gartland).
[31] Exs. 17A (Folder) and 18A (door hanger advertising).
[32] *Id.*
[33] Ex. 50 (Various Secretary of State forms for A&K Construction, Inc,); Ex. 16 at DLI 307; Tr. Vol. I at 103 (N. Muhammad).
[34] Tr. Vol. I at 106 (N. Muhammad). The record does not show the exact date this event occurred.
[35] Tr. Vol. I at 119-120 (N. Muhammad). Ms. Muhammad testified that a meeting took place in November 2017 between Mr. Wazwaz and Mr. Muhammed sometime after Mr. Muhammad placed money into the account. She also testified that the funds deposited came from a customer who signed a contract on September 4, 2017. Sometime between receiving and banking those funds and the November meeting, Mr. Muhammad discovered he was no longer able to access the bank account.

17. Sometime after entering into the Joint Venture Agreement, in an attempt to clarify the division of labor within A&K, Ms. Muhammad created a document[36] that stated:

Business Management Roles	
Moses	**Kaleem**
Sales	Sales
Inspection/Reinspection	Customer Service
Supplements	Adjustments
Invoice/Invoice Ins. Co.	Pull Permits
Production/Scheduling	Close Permits
Material Orders	Help with Scheduling as Needed
Deposits	Help Find Crews
Writing Checks	Deposits
Financing?	
Crew	
Customer Service Follow Up	

18. Mr. Muhammad signed this business management document on June 12, 2017, and Respondent signed it on September 5, 2017.[37]

19. The parties to the Joint Venture Agreement met in November of 2017, at the insistence of the Muhammads.[38] After this meeting, and as a result of discussions at the meeting, KIEN tried to reach customers to tell them that KIEN would not allow its license to be used for work contracted with A&K or ACI. When the Muhammads

[36] *See* Ex. 9 at DLI 188.
[37] *Id.* The date the document was signed is not obvious. It appears that Mr. Muhammad signed in June, 2017 but the date appears that it may have been changed. It appears that Mr. Wazwaz signed on September 5, 2017.
[38] Tr. Vol. I at 120-121 (N. Muhammad).

contacted customers they learned that many had already signed new contracts with ACI or that they wanted their work completed by Respondents[39]

20. On September 4, 2017, Mr. Muhammad served Respondents with a "notice of termination" of the Joint Venture Agreement.[40]

21. During the spring, summer, and fall of 2017, A&K entered into contracts with more than fifty homeowners for storm damage repair.[41]

22. In fall of 2017, the Department received two complaints about Respondents from homeowners. Wayne Gartland, a senior investigator with the Department, investigated these complaints.[42]

III. Homeowner Complaints

23. On July 6, 2017, Respondents contracted to repair the roof, windows, garage door, and deck of a home owned by Charles and Eunice Semakula located at 9216 Woodhill Bay, in Brooklyn Park.[43] The contract stated that the work would be completed in "7-14 days, weather permitting."[44]

24. The Department received a Building Contractor Consumer Complaint against KIEN on October 16, 2017.[45] The homeowner, Charles Semakula, stated that the complaint was against KIEN, with an address of 1650 132nd Ave. NW, in Coon Rapids. Mr. Semakula listed the company's e-mail address as moses@allstateconstruction.us.[46] Mr. Semakula reported that, although he had made a down payment, his roof and two windows were not replaced "as per contract." He also stated, "[t]he roof repairs destroyed our gutters KIEN promised to fix them but to date nothing done."[47] He asked that the work be completed, the gutters be repaired and that the contractor "respond to our phone calls and emails and text messages."[48]

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[39] Tr. Vol. I at 112-115 and 121-124.(N. Muhammad). Ms. Muhammad testified that customers wanted the work done by Mr. Wazwaz and Mr. Taylor because the customers had the most contact with them and just wanted the work finished.
[40] Ex. 9 at DLI 183.
[41] Ex. 12 (List of A&K customers with contracts); Tr. Vol. I at 113 (N. Muhammad). Examples of these contracts entered into evidence never used the words "A&K, Inc. or A&K Construction." Instead, the contracts' letterhead stated "Allstate Construction" and "KIEN." The contract forms listed KIEN, Inc.'s license number. Many of the contracts entered into evidence were signed by Respondents. *See* Ex. 21 at DLI 157 (Contract with Semakula); Ex. 38 at DLI 248-49 (Contract with Mai Thingoc (Huynh)).
[42] Exs. 6 and 8.
[43] Ex. 21 at DLI 157 (Contract signed by Respondent Wazwaz as "representative of Allstate Construction and KEIN, Inc., July 6, 2017). The contract was signed by Eunice Semakula. Other exhibits show that the home belonged to Charles and Eunice Semakula and communication about the contract was primarily from Charles on behalf of the couple.
[44] *Id.*
[45] Ex. 5 (Building Contractor Consumer Complaint Form).
[46] *Id.*
[47] *Id.*
[48] *Id.*

25. On February 1, 2018, Respondents filed a claim for $8,854.67, in Hennepin County Conciliation Court against Eunice Semakula for repairs Respondents claimed they completed on the Semakula's home at 9216 Woodhill Bay.[49]

26. On February 7, 2018, Naomi Muhammad filed a mechanic's lien statement against the Semakula's home at 9216 Woodhill Bay on behalf of KIEN.[50]

27. From July 6, 2017, when the contract was signed, through January 2018, the Semakulas were frustrated when trying to communicate with Respondents and KIEN. E-malls show that the Semakulas believed that Respondents represented KIEN.[51]

28. The Department received another consumer complaint regarding ACI and KIEN on October 30, 2017. The complainant, Katie Mae Carroll, has a home located at 287 117 Avenue, N.E., in Blaine.[52]

29. Another complainant, Thien Nguyen, owns a home in Blaine with his mother.[53] Mr. Nguyen's mother signed a contract for repairs to the home on June 15, 2017, with Mr. Muhammad and Respondents present.[54] On July 3, 2017, Wazwaz returned to the home and told Mr. Nguyen that he was going to revise the contract. The new contract listed only ACI.[55] On July 16, 2017, Mr. Nguyen gave a check to Wazwaz, made out to A&K for $10,000, to start work on the house.[56] Respondents began the work on the roof of the house in the winter of 2017, and on the siding in the spring of 2018.[57]

30. Mr. Muhammad was not present when the project was done.[58] The work was not done to Mr. Nguyen's satisfaction. The work twice failed an inspection conducted by the City of Blaine.[59]

31. On August 16, 2018, Mr. Muhammad told Mr. Nguyen that Mr. Muhammad was entitled to payment for the work that was done on the home. A few minutes later, Respondents came to Mr. Nguyen and told him that Respondents were the general contractor and were owed payment.[60]

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[49] Ex. 21 at DLI 154 (Conciliation filing signed by M. Wazwaz, Feb. 1, 2018).
[50] Ex. 21 (Mechanic's lien statement, Feb. 7, 2018).
[51] Ex. 21 at DLI 158 (E-mail from Charles Semakula to Naomi Muhammad, Jan 12, 2018).
[52] Ex. 25 at DLI 108 (Building Contractor Consumer Complaint Form, Oct. 30, 2017); Tr. Vol. II at 189 (Gartland); Ex. 6 at DLI 203-206 (Department's information requests to Wazwaz, A&K and ACI).
[53] Tr. Vol. I at 25 (T. Nguyen).
[54] Ex. 46 (Contract dated June 15, 2017). The contract lists Allstate and KIEN on the letterhead and gives KIEN's license number.
[55] Tr. Vol. I at 27-28 (T. Nguyen).
[56] Ex. 47 (Contract dated July 3, 2017); Tr. Vol. I at 27-30 (T. Nguyen).
[57] Tr. Vol. I at 31 (T. Nguyen).
[58] *Id.*
[59] *Id.* at 32.
[60] *Id.* at 33.

32. On August 18, 2018, Respondents filed a mechanic's lien against Mr. Nguyen's property in the amount of $19,430.86, for the work on the house. The claim was made on behalf of ACI.[61]

33. Mai Thingoc Huynh owns a home with her husband, Dong Huynh, located at 315 121st Ave. Northeast, in Blaine. The home sustained storm damage in June of 2017.[62] On June 28, 2017, she signed a contract which listed ACI and KIEN on the letterhead. The contract described the proposed work to include "roof, siding, gutter, AC unit and facia". The contract sum stated "Agreed amount Ins. Dollars."[63]

34. Ms. Huynh was referred to Respondents, and specifically to Wazwaz, by a friend.[64] She wrote a check in the amount of $8,847.00,[65] to A&K as instructed by Respondents.[66] Most of Ms. Huynh's contact was with Wazwaz[67] and she assumed that Wazwaz was in charge of everything related to the contract.[68]

35. When the work on her home was completed, according to Respondents, but had not yet been approved by the City of Blaine, both Wazwaz and the Muhammads demanded payment from her.[69]

36. On January 24, 2018, Respondents filed a claim against Ms. Huynh and her husband in Anoka County Conciliation Court.[70] The claim form is signed by Mr. Wazwaz and he lists himself as the CEO of A&K and ACI.[71]

37. Ms. Huynh entered into a settlement with Respondents, which the conciliation court adopted as an order on March 8, 2018.[72] The settlement agreement stated that Respondents would be paid $11,536.24, after the home passed final inspection.[73] As of December 11, 2018, the home had not passed inspection.[74] Ms. Huynh contacted the Department about her concerns.[75]

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[61] Ex. 48 (Mechanics Lien, Aug. 17, 2018); Tr. Vol. I at 33-34 (T. Nguyen).
[62] Tr. Vol. I at 48 (M.T. Huynh).
[63] Ex. 15 at 286 (Contract, June 28, 2017).
[64] Tr. Vol. I at 49 (M.T. Huynh).
[65] Ex. 15 at DLI 287 (Check made out to A&K Construction, Aug. 10, 2017).
[66] Tr. Vol. I at 52 (M.T. Huynh).
[67] *Id.* at 55-56.
[68] *Id.* at 56.
[69] *Id.* at 55-57.
[70] Ex. 40 (Conciliation Court Claim form, Jan. 24, 2018).
[71] *Id.* at DLI 257.
[72] Ex. 38 at DLI 246 (Settlement Agreement and Order, March 8, 2018).
[73] *Id.*
[74] Tr. Vol. I at 59 (M.T. Huynh).
[75] Ex. 39 at DLI 251 (E-mail from Ms. Huynh to Wayne Gartland, Mar. 8, 2018); Tr. Vol. I at 58 (M.T. Huynh).

IV. The Department's Investigation

38. On November 23, 2017, after receiving the consumer complaints from Mr. Semakula and Ms. Carroll, Mr. Gartland sent an information request to Respondents[76] for:

- All written information on the projects you have contracted for in the state of Minnesota, including:
- Copies of all contracts;
- Copies of all building permits and inspection reports;
- A list of all subcontractors engaged in the projects;
- Complete information on any licensed contractors you have work[sic] for, including copies of registration information for these contractors;
- Complete financial accounting for these projects.

39. The information request explained to Respondents that the failure to respond to a request for information could result in penalties.[77]

40. Respondents sent an email in response to the request. The email referred the Department to KIEN and provided only five pages of information. The documents provided were a small fraction of the documents generated by the joint enterprise.[78] Respondents failed to provide all of the information requested by the Department.[79]

V. Procedural History

41. The Department issued an administrative order with penalty to Respondents imposing a $17,000 penalty. The penalty combined the $7,000 penalty previously stayed by the Department, as well as a $10,000 penalty for the new violations.[80]

42. By letter dated April 10, 2018, Respondents requested a hearing.[81]

Based on these Findings of Fact, the Administrative Law Judge makes the following:

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[76] Ex. 6 (Information request, Nov. 22, 2017); Tr. Vol. II at 189 (Gartland).
[77] Ex. 6 at DLI 204.
[78] Ex. 7 (Respondents' e-mail and attachments, Dec. 12, 2017).
[79] Tr. Vol. II at 192-193 (Gartland).
[80] Administrative Order with Penalty dated March 16, 2018, attached to Notice and Order for Prehearing Conference (May 11, 2018).
[81] Ex. 41 (Letter, April 10, 2018).

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondents under Minn. Stat. §§ 14.50, 326B.082, 326B.84, 326B.33, 326B.46 (2018) and Minn. R. 2891.0040 (2017).

2. The Department has satisfied all procedural requirements of statute and rule and this matter is properly before the Administrative Law Judge and the Commissioner.

3. The Department bears the burden of proof to establish that the Administrative Penalty and Cease and Desist Order issued March 16, 2018 should be should be affirmed.[82]

4. Under Minn. Stat. § 326B.082, subd. 7, the Commissioner may issue an administrative order to any person who the Commissioner determines has committed a violation of the applicable law. The Commissioner shall issue the administrative order by serving the administrative order on the person. The administrative order may require the person to correct the violation, may require the person to cease and desist from committing the violation, and may assess monetary penalties.

5. Minn. Stat. § 326B.802, subd. 11, defines "[r]esidential 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.

6. Minn. Stat. § 326B.805, subd. 1 states that a "person who meets the definition of residential building contractor as defined in section 326B.802, subd. 11, must be licensed as a residential building contractor by the commissioner."

7. Respondents held themselves out as residential building contractors without a license.

8. Minn. Stat. § 326B.802, subd. 12, defines "[r]esidential remodeler" as: "a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills as defined in this section."

[82] Minn. R. 1400.7300, subp. 5. (2017).

9. Minn. Stat. § 326B.805, subd. 1 states that a "person who meets the definition of residential remodeler as defined in section 326B.802, subd. 12, must be licensed as a residential building contractor by the commissioner."

10. Respondents held themselves out as residential remodelers without a license.

11. Minn. Stat. § 326B.802, subd. 14 defines the term "[r]oofer" 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."

12. Minn. Stat. § 326B.805, subd. 1 states that a person who meets the definition of roofer as defined in section 326B.802, subd. 11, must be licensed by the commissioner as a residential roofer, residential building contractor or residential remodeler.

13. Respondents held themselves out as residential roofers without a license.

14. Except as provided in Minn. Stat. § 326B.805, subd. 6, no persons required to be licensed by Minn. Stat. § 326B.805, subd. 1 may act or hold themselves out as a residential building contractor, residential remodeler, residential roofer, or manufactured home installer for compensation without a license issued by the Commissioner.

15. The Respondents engaged in fraudulent, deceptive, and dishonest practices in violation of Minn. Stat. § 326B.84(2), and Minn. R. 2891.0040 subp. 1C (2017) by holding themselves out as, and acting as, a residential building contractor, residential remodeler and residential roofer, without having a license issued by the Commissioner.

16. Respondents provided a response to the Department that was false, misleading or incomplete, or failed to comply with the Department's March 7, 2013, request for information.

17. An order by the Department taking disciplinary action against the Respondent's license is in the public interest.

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 Order with Penalty issued on March 16, 2018, should be **AFFIRMED.**

Dated: February 28, 2019

BARBARA J. CASE
Administrative Law Judge

Reported: transcript prepared

NOTICE

Pursuant to Minn. Stat. § 326B.082, subd. 8(c), 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.(2018). 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 (2018), 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 (2018), this Report becomes a final decision.

MEMORANDUM

I. Issue

At issue in this case is whether Respondents held themselves out as being licensed residential building contractors, residential remodelers or residential roofers and engaged in those trades without a license. Engaging in any of these activities without a license violates Minnesota law and the consent order Respondents entered into with the Department on May 23, 2017.[83]

II. Witness Credibility

The Administrative Law Judge found Ms. Muhammad and the homeowners credible for several reasons. First, their testimony was consistent with their prior documented statements. Ms. Muhammad's testimony about events occurring during the joint venture was consistent with the lengthy explanatory e-mail she sent to the Department's investigator in December 2017.[84] Similarly, the homeowners' testimony comported with the complaints that they filed with the Department.

Second, additional written evidence supports the testimony of these witnesses. Ms. Muhammad testified that Respondent essentially took control of the joint venture by filing documents to incorporate A&K only in his name and by taking control of the bank account. The written documentation supports that testimony. Also, the homeowners testified that their main contact with the joint venture consisted of communication with Wazwaz. Consistent with this testimony, most of the contracts in evidence were signed by Wazwaz, there are text and e-mail communications with him, and he filed claims against the homeowners in conciliation court.

Third, Ms. Muhammad and the homeowners testified consistently with each other. Witnesses drew a different meaning from some of the events, so that homeowners found Wazwaz to be the reliable partner in A&K while Ms. Muhammed viewed him as uncommunicative and controlling. However, the facts testified to by each of these witnesses were consistent.

In contrast, Respondents' testimony was not supported by other reliable evidence. For example, Wazwaz portrayed himself as the office person for A&K, stating that his role was to deal with the insurance companies while Mr. Muhammad did sales, managed crews, and was on the job sites.[85] In contrast to this depiction, Wazwaz negotiated the homeowner contracts, was the point of contact with customers signed contracts, controlled the venture's funds and filed claims against customers. Furthermore, the Joint Venture Agreement states that both men would do the work start to finish, and shared responsibility for completing inspection and re-inspection, production, scheduling and managing crews. All of the roles listed, and all of those

[83] Minn. Stat. § 326B.805, subds. 1, 3 (2018); *see also* Minn. Stat. § 326B.802, subds. 11-12 (2018); Ex. 4 (Consent Order).
[84] Ex. 9.
[85] Tr. Vol. II at 252 (Wazwaz).

performed by Respondents, constitute "acting as or holding oneself out as" a licensed contractor. Therefore, Mr. Wazwaz was not credible when he testified that he acted as an office worker or an employee of the joint venture.

III. Analysis

Respondents entered into a joint venture with KIEN, a licensed contractor, in order to secure and profit from contracts with homeowners for the repair of storm damage. The work contracted for required multiple skilled trades such as roofing, siding, windows and garage doors. The work required a residential building contractor, residential remodeler or residential roofer license.

The Department argues that Respondents violated state licensing laws when Respondents held themselves out as residential building contractors, residential remodelers, or residential roofers by entering into agreements and performing work for over fifty homeowners to repair storm-damaged homes. The Department further argues that this behavior constituted fraudulent, dishonest and deceptive practices because Respondents implemented a scheme to evade the licensing laws and misrepresented their qualifications to homeowners. Finally, the Department argues that Respondents failed to provide a complete response to the Department's information request.

Respondents argue that the Department is improperly trying to use the licensing requirements for contractors to resolve consumer complaints. Respondents further argue that their actions were legal because they created a "joint venture" with a legitimate contractor license and never represented themselves as being the licensed entity. Respondents' central defense is that the legal scope of the work for the all involved entities was the provision in the joint venture agreement that "KIEN, Inc. will pull the permits for the work. Only officers of KIEN, Inc. (Kaleem and Naomi Muhammad) are allowed to pull the permit. No others are authorized."[86]

With certain limited exceptions not met by Respondents,[87] "no persons . . . 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.[88] Respondents violated this law both by acting as if they were licensed to engage in these activities and by holding themselves out, that is representing themselves, to be licensed.

Although Respondents were not licensed in any capacity, Wazwaz negotiated and entered into contracts with homeowners as evidenced by the prominent use of

[86] Ex. 100; Respondents' closing argument at 3. Respondents also contend that they took control of the enterprise, including the bank account and contact with customers, because Mr. Muhammad was irresponsible. Respondents argue that homeowners hired them to complete work on their homes because Mr. Muhammad failed to perform the work. Relatedly, Respondents argue that when they completed work on homes and homeowners pulled the permit, Respondents were employees and not contractors. This argument is unavailing in part because it was not what occurred in the majority of the joint venture's contracts.

[87] *Id.*

[88] Minn. Stat. § 326B.805, subd. 3.

Respondents' corporate name, ACI, and Wazwaz's signature on many of the contracts. The homeowners who testified believed Wazwaz to be the person responsible for their projects. Wazwaz argues that he had to take on the role of contractor because Mr. Muhammad was unresponsive to customers is unavailing. Irrespective of his excuses, Mr. Wazwaz took on roles for which he was not licensed and about which he had signed a cease and desist consent order with the Department.

The joint venture agreement further evidences that the scope of Wazwaz' activities constituted holding himself out as a contractor. The agreement states "Production will take place with Kaleem and/or Moses. Production is the start to finish of the work." It also stated that all decisions needed the agreement of both parties. Respondents listed ACI's address when he registered A&K's name. Respondent filed incorporation documents for A&K and signed his name alone, listing his business address and his e-mail address on the document.[89] Respondent controlled A&K's bank account. When, because work was not completed, homeowners failed to pay the joint venture, Respondent filed conciliation court claims against the homeowners and signed the claims as head of the corporation. All of these actions constitute Respondents holding themselves out as licensed contractors when they were not licensed, had previously been investigated for the same unlawful activity, and had agreed to cease and desist from doing so.

Respondents' central argument is that he could not have held himself out as a licensed general contractor, in violation of the law and his consent order, because only KIEN, Inc. was licensed and only KIEN, Inc. pulled permits for the projects, Respondents were not holding themselves out as licensed general contractors. While it appears that Respondents believed they had found a path around the licensing laws and the consent order, the written records of the joint venture and Respondents' actions show that he acted as and held himself out as a general contractor in violation of the law and the consent order. This behavior alone meets the definition of fraudulent, deceptive and dishonest practices.

IV. Conclusion

The Department has established the alleged violations by a preponderance of the evidence. Therefore, the Administrative Penalty Order dated March 16, 2018 should be **AFFIRMED**.

B. J. C.

[89] Ex. 50 (Articles of Incorporation, June 30, 2017). The document also listed the Registered Agent as MN Investment Holding, L.L.C., another entity associated with Respondents.