OAH 60-1902-37191

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Journeyworker-Electrician License of Trent Lesnau[1]	**RECOMMENDATION AND ORDER ON THE DEPARTMENT'S MOTION FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge James E. LaFave upon the Minnesota Department of Labor and Industry's Motion for Summary Disposition (Motion).

Allen Cook Barr, Assistant Attorney General, represents the Minnesota Department of Labor and Industry (Department). There has been no appearance by, or on behalf, of Trent Lesnau (Respondent).

The Department filed its Motion on May 24, 2021. Respondent did not file a response. The record on the Motion closed on June 11, 2021, which was the deadline for Respondent's response.[2]

Based upon the record, and for the reasons explained in the Memorandum below, the Administrative Law Judge issues the following:

RECOMMENDATION

1. The Commissioner of Labor and Industry (Commissioner) should **GRANT** the Department's Motion.

2. The Commissioner should **AFFIRM** the Licensing Order with Penalty (Licensing Order), dated August 3, 2020.

[1] This action was originally brought against Superior Electric, Inc., and Richard Hunt in addition to Trent Lesnau. Superior Electric, Inc., and Richard Hunt settled the claims against them. The caption was updated to reflect that Mr. Lesnau is the only remaining party.
[2] Minn. R. 1400.6100, .6600 (2021).

ORDER

As this Recommendation resolves all issues presented in the Notice and Order for Prehearing Conference (Notice and Order), further proceedings in this matter are **CANCELLED**, and the record shall be transmitted to the Commissioner for issuance of a final decision.

Dated: September 9, 2021

JAMES E. LAFAVE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 326B.082, subd. 8 (2020), this Report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry (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 the Commissioner of the Department of Labor and Industry, Attention: Jessica Stimac, Director of Legal Services, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155, telephone (651) 284-5177, 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 (2020). 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 (2020), 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 (2020), this Report becomes a final decision.

MEMORANDUM

I. Introduction

The Department seeks summary disposition in this matter on several grounds. The Department asserts that there are no material facts in dispute and that the record shows that Respondent demonstrated financial irresponsibility and that he provided false and misleading information to the Department. The Department contends that it is entitled to judgment as a matter of law. The Administrative Law Judge determines that no material issues of fact exist and that summary disposition in favor of the Department is warranted.

II. Factual Background

The Department issued Respondent a journeyworker-electrician license on September 12, 2008.[3] That license enabled Respondent to perform electrical work for a licensed contractor if Respondent was an employee, partner, or officer of the contractor.[4] He was, however, prohibited from independently contracting to do electrical work.[5]

Specialty Construction, Inc., was a residential-building contractor formerly licensed by the Department.[6] Respondent worked for Specialty Construction.[7] He was Specialty Construction's "qualifying builder", meaning Respondent was the person that fulfilled the examination and education requirements on behalf of Specialty Construction.[8] The Department suspended Specialty Construction's license in 2017.[9]

Lefebvre's Carpet, LLC, obtained a judgement against Specialty Construction in 2016.[10] Respondent wrote a check to partially satisfy that judgement[11], but the check was written on a closed account and did not clear.[12]

The Department obtained a judgment against Specialty Construction in 2019.[13] The judgment stemmed from Specialty Construction's failure to comply with the order suspending its license and remains unsatisfied.[14]

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[3] Declaration of Chris Williams (Williams Decl.) ¶ 2 (May 20, 2021).
[4] Minn. Stat. § 326B.33, subd. 2 (2020).
[5] *Id.*
[6] Williams Decl. ¶ 3.
[7] *Id.*
[8] *Id.*; *see* Minn. Stat. § 326B.802, subd. 10 (2020).
[9] *Id.*
[10] *Lefebvre Carpet's LLC v Specialty Construction LLC,* No. 86-CV-16-4868 (Wright Cty. Oct. 11, 2016).
[11] Williams Decl. ¶ 4.
[12] *Id.; see* Ex. 1.
[13] Williams Decl. ¶ 5.
[14] *Id.*

In 2019, Respondent told a Department investigator that he was an owner or officer when he performed electrical work for All Areas Electric, Inc.[15] All Areas Electric, however, never filed an amended disclosure of owners or partners listing Respondent.[16] All Areas Electric also did not report to the Minnesota Department of Employment and Economic Development (DEED) that Respondent was one of its employees.[17] Respondent's attorney told a Department investigator that Respondent did not have an ownership interest in All Areas Electric.[18]

In 2020, Superior Electric provided Department investigators a log of all the employees who worked at one of its job sites.[19] Respondent signed the log as an electrician who had performed work at the site.[20] Superior Electric never reported to DEED that Respondent was one of its employees and Respondent was not listed as one of Superior Electric's officers, owner's, or partners at the time the work was performed.[21]

III. Summary Disposition Standard

Summary disposition is the administrative law equivalent of summary judgment.[22] A motion for summary disposition shall be granted when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law.[23] The Office of Administrative Hearings follows the summary judgment standards developed in Minnesota's district courts when considering motions for summary disposition in contested case matters.[24]

The function of the Administrative Law Judge on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but to determine whether genuine, material factual issues exist.[25] The Administrative Law Judge does not weigh the evidence; instead, the Judge views the facts and evidence in a light most favorable to the non-moving party.[26]

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.[27] A fact is material if its resolution will affect the outcome of the case.[28] If the moving party meets the initial burden, the burden shifts to

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[15] *Id*. at ¶ 6.
[16] *Id.; see* Ex. 2.
[17] *Id.; see* Ex. 2.
[18] Williams Decl. ¶ 6.
[19] *Id.* at ¶ 7.
[20] *Id.*
[21] Williams Decl. ¶ 6.
[22] *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2021).
[23] *See Sauter v. Sauter*, 244 Minn. 482, 484, 70 N.W.2d 351, 353 (1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).
[24] Minn. R. 1400.6600 (2021).
[25] *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[26] *See id.; Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[27] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[28] *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

the responding party to prove the existence of any genuine issue of any material fact.[29] A genuine issue is not a "sham or frivolous" one,[30] and it cannot rely on mere allegations or denials.[31] Instead, a genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.[32] When parties file cross motions for summary disposition, they "tacitly agree that there exist no genuine issues of material fact."[33]

Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.[34] Thus, summary disposition is only proper when no fact issues need to be resolved.[35]

IV. ANALYSIS

a. Respondent performed work for companies when he was not an employee

Minnesota law provides that no one may perform electrical work unless the work is for a licensed contractor and the individual is an employee, partner, or officer of the licensed contractor.[36] In addition, employers are required to submit a list of every employee to DEED.[37]

In this case, Respondent stated he worked for All Areas Electric in July of 2019. But All Areas never reported Respondent was an employee to DEED. Respondent tried to claim he was not an employee of All Areas Electric, but rather was an owner or officer. But that was not the case. Respondent's own attorney admitted as much.

Respondent also improperly worked for Superior Electric. In 2020, he signed a log as an electrician who performed work at a work site. Respondent, however, was not an employee of Superior Electric as demonstrated by the fact Superior Electric did not report Respondent as an employee to DEED.

Respondent was never an employee, officer, or owner of All Areas Electric or Superior Electric. He therefore violated the law when he worked at their job sites and consequently is subject to discipline.

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[29] *Thiele,* 425 N.W.2d at 583.
[30] *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *review denied* (Minn. Feb. 6, 1985).
[31] *DLH*, 566 N.W.2d at 71.
[32] *See* Minn. R. Civ. P. 56.05.
[33] *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 610 (Minn. 2012) (quotation omitted).
[34] *See Sauter*, 244 Minn. at 485, 70 N.W.2d at 353.
[35] *See id*.
[36] Minn. Stat. § 326B.33, subds. 1, 2 (2020). There is an exception for employees performing work at facilities owned by their employees, but that except is no applicable in this case.
[37] Minn. Stat. § 268.044, subd. 1 (2020).

b. Respondent demonstrated financial irresponsibility

The Commissioner may take enforcement action against any licensee if the licensee "conducts the person's affairs in a manner that demonstrates . . . financial irresponsibility."[38] The Commissioner may also act against the qualifying person of a financially irresponsible licensee.[39] "A single unpaid judgement by a residential building contractor is sufficient to support a finding of 'financial irresponsibility.'"[40]

In this case, Respondent attempted to satisfy a judgement by writing a check on a closed bank account. By definition, that is financial irresponsibility. In addition, Respondent, as Specialty Construction's qualifying builder, is subject to discipline for Specialty Construction's financial irresponsibility.[41] The Department obtained a civil judgement against Specialty Construction after it failed to comply with a licensing order. The judgment remains unsatisfied. Respondent is therefore subject to discipline.

c. Respondent provided false information to the Department

The Commissioner may take enforcement action against any licensee who engages in a deceptive or dishonest act.[42] During the Department's investigation, Respondent falsely told a Department investigator that he was an owner or officer of All Areas Electric. Respondent's attorney confirmed this was not true. Making a false statement to a Department investigator is a deceptive or dishonest act. Respondent is, therefore, subject to discipline.

V. Conclusion

There are no material facts in dispute. The Department has established that it is entitled to summary disposition and that imposition of discipline upon Respondent is in the public interest. Therefore, the Commissioner should **GRANT** the Department's Motion and **AFFIRM** the Licensing Order.

J. E. L.

[38] Minn. Stat. § 326B.082, subd. 11(b)(9) (2020).
[39] *Id.* at subd. 11(b).
[40] *In re Licensing Order with Penalty Issued to Nokomis Revival,* OAH 8-1902-35717, 2019 WL 2252324 at *2 (Minn. Office of Admin. Hearing Apr. 2, 2019).
[41] Minn. Stat. § 326B.082, subd. 11(b).
[42] Minn. Stat. § 326B.082, subd. 11(b)(8).