

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

In the Matter of Jon DeVary,
Individually, and Doing Business as
Original Handyman, Inc.

FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION

The above matter came on for a hearing before Administrative Law Judge Richard C. Luis on December 15, 2005 at the Office of Administrative Hearings in Minneapolis.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry.

There was no appearance by or on behalf of Jon De Vary, individually or on behalf of the business known as Original Handyman, Inc. Both are located at 7953 200th Street, Lakeville, Minnesota 55044.

The record closed on December 15, 2005.

This Report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 144.991, subd. 5, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least five days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

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. The record closes upon 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.

STATEMENT OF ISSUES

Whether disciplinary action should be taken against Jon DeVary, individually, and doing business as Original Handyman, Inc., for violation of a Consent Cease and Desist Order prohibiting him from engaging in unlicensed residential building contractor activities, and whether Mr. DeVary performed unlicensed residential building contractor activities and whether he has demonstrated financial irresponsibility by failing to satisfy a judgment against him entered in favor of Michael and Mary Rinehart?

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 22, 2005, a Prehearing Conference was conducted in this matter at the Office of Administrative Hearings. Counsel appeared for the Department of Labor and Industry, and Mr. DeVary (Respondent) also appeared. At the Prehearing Conference, the Administrative Law Judge set the hearing for December 15, 2005.

2. The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges in this Matter reads, at page 4:

Respondent's failure to appear at the Contested Case Hearing and/or Prehearing Conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

3. The Respondent did not appear at the hearing on December 15, 2005, nor did anyone appear on its behalf. The Respondent made no prehearing request for a continuance.

4. The allegations of the Notice of an Order for Hearing, Order for Prehearing Conference and Statement of Charges are deemed proved and are incorporated into these Findings by reference.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subs. 6 & 7, and 326.91.

2. Any of the Findings of Fact more properly termed Conclusions are incorporated as such.

3. The Respondent was given timely and proper Notice of the Hearing in this matter. The Department has complied with all procedural requirements of law and rule.

4. Under Minn. Rule 1400.6000, the Respondent is in default as a result of a failure to appear at the scheduled Hearing.

5. Under Minn. Rule 1400.6000, the allegations and issues as set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges may be taken as true or deemed proved when a party defaults.

6. Based as the facts as set out in Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, the Respondent has violated Minn. Stat. §§ 326.84, subds. 1 & 1b, 326.842 and 326.91, subds. 1(5) and subd. 1(6).

7. Disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against Jon DeVary, d/b/a Original Handyman, Inc.

Dated this 19th day of December, 2005

/S/Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Default

NOTICE

Under Minn. Stat. § 14.62, subd. 1, 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.

RCL