

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

In the Matter of Sean Schimmelman and  
Jennifer Schimmelman, individually and  
d/b/a Sean Schimmelman Contracting,  
a/k/a Up North Custom Homes, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on February 13, 2006, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed that day.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (the Department).

There was no appearance by or on behalf of Sean Schimmelman and Jennifer Schimmelman, individually and d/b/a Sean Schimmelman Contracting, a/k/a Up North Custom Homes, Inc., 881 161<sup>st</sup> St. NW, Hammond, WI 54015 (Respondents).

**NOTICE**

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. § 14.61, 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 ten 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 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.

## **STATEMENT OF ISSUES**

The issues presented in this case are whether the Respondent is subject to discipline and/or civil penalties because:

(1) By conducting business under a name different than the name in which they were licensed, Respondents engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) (2004), and Minn. R. 2891.0040, subp. 1E (2005);

(2) By engaging in residential building contractor activities after the expiration of their license, the Respondents violated Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subds. 1(5) and 4;

(3) By representing on their correspondence that they were licensed while their license was inactive, the Respondents engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1F;

(4) By performing services beyond the scope of their residential building contractor's license, the Respondent violated Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1G;

(5) By failing to obtain local building permits and/or inspections, the Respondents engaged in fraudulent deceptive or dishonest practices in violation of Minn. Stat. § 326.91, subds. 1(2) and 4, and Minn. R. 2891.0040, subp. 1H;

(6) By issuing checks that were returned for insufficient funds, the Respondents demonstrated that they were incompetent, untrustworthy, and financially irresponsible in violation of Minn. Stat. § 326.91, subds. 1(6) and 4; and

(7) By failing to pay subcontractors for work performed, the Respondents demonstrated that they were incompetent, untrustworthy, and financially irresponsible in violation of Minn. Stat. § 326.91, subds. 1(6) and 4.

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

## **FINDINGS OF FACT**

1. On August 22, 2005, the Commissioner of Labor and Industry issued a Notice of and Order for Hearing, Order for Prehearing conference, Order to Show Cause and Statement of Charges (Notice and Order for Hearing). On August 24, 2005, the Department served the Notice and Order for Hearing on the Respondents by first-class mail addressed to Sean & Jennifer Schimmelman, Sean Schimmelman Contracting, Up North Custom Homes, Inc., at the following addresses: 18887 Garnet

St. NW, Anoka, MN 55303; 881 161<sup>st</sup> St. NW, Hammond, WI 54303; and 18760 Peridot Street NW, Anoka, MN 55303. The Department also served the Notice and Order for Hearing on the Respondent's attorney, David E. Albright, 7814 131<sup>st</sup> Street West, Apple Valley, MN 55124.

2. The Prehearing Conference was scheduled to take place at 1:30 p.m. on October 5, 2005, at the Office of Administrative Hearings. The Respondents' attorney filed a Notice of Appearance on that date.

3. Counsel for the Department and counsel for the Respondents appeared at the prehearing conference. Counsel for the Respondents stated that the Schimmelmans were living at the address in Hammond, Wisconsin, but that their zip code was 54015, not 54303. A procedural schedule was set to brief Respondents' motion to appeal a Cease and Desist Order issued August 24, 2005. In addition, a hearing was scheduled to take place December 7-8, 2005.<sup>[1]</sup>

4. Respondents failed to submit briefs on their motion to appeal the Cease and Desist Order, and they failed to exchange exhibits or witness lists as required by the prehearing order.

5. Shortly before the scheduled hearing, the Department requested that the hearing be removed from the calendar because Respondents had agreed to the terms of a Consent Order, and the Department was waiting for the signed Consent Order to be returned.

6. On or about January 23, 2006, the Department requested that the matter be rescheduled for hearing because the Respondents had failed to return the signed Consent Order. The hearing was rescheduled to take place at 9:30 a.m. on February 13, 2006, at the Office of Administrative Hearings.<sup>[2]</sup>

7. On February 13, 2006, neither the Respondents nor their counsel appeared for the hearing. Neither the Respondents nor their counsel contacted the Department or the Administrative Law Judge to request a continuance. Because the Respondents failed to appear at the hearing in this matter, they are in default.

8. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges at paragraphs 1-11 are hereby taken as true and incorporated into these Findings of Fact.

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, 326.91, subd. 4, and 326.92, subd. 3.

2. The Notice and Order for Hearing issued by the Department was proper, and the Department has fulfilled all relevant procedural requirements of law and rule.

3. The Respondents are in default. Pursuant to Minn. R. 1400.6000, the allegations contained in paragraphs 1-11 of the Statement of Charges are hereby taken as true.

4. The commissioner may take action against a license if the commissioner finds that the order is in the public interest and that the licensee has engaged in a fraudulent, deceptive, or dishonest practice.<sup>[3]</sup> The following acts or practices are considered fraudulent, deceptive, or dishonest practices:

conducting a building or remodeling contracting business in any name other than the one in which the contractor is licensed, unless the licensee has filed a certificate of assumed name with the secretary of state and provided a copy of the certificate to the commissioner;

contracting or offering to contract while the license is revoked, under suspension, or inactive for any reason;

knowingly contracting for, or performing, a service beyond the scope of the license; and

performing any construction without obtaining applicable local building permits and inspections.<sup>[4]</sup>

5. By conducting business under a name different than the name in which they were licensed, by representing that they were licensed when their license was expired, by performing a service beyond the scope of the license, and by performing construction without obtaining applicable local building permits and inspections, Respondents engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subs. 1E-H (Counts 1, 3-5).

6. Residential remodelers and residential building contractors must be licensed.<sup>[5]</sup> The commissioner may take action against a license if the commissioner finds that the order is in the public interest and the licensee has failed to comply with any provision of § 326.84.<sup>[6]</sup> In addition, the commissioner may take action against an unlicensed person based on conduct that would provide grounds for administrative action against a license holder.<sup>[7]</sup>

7. By engaging in residential building contractor activities after the expiration of their license, the Respondents violated Minn. Stat. §§ 326.84, subs. 1 and 1b, and 326.91, subs. 1(5) and 4 (Count 2).

8. The commissioner may take action against a license if the commissioner finds that the order is in the public interest and that the licensee has been shown to be incompetent, untrustworthy, or financially irresponsible.<sup>[8]</sup>

9. By issuing checks that were returned for insufficient funds and by failing to pay subcontractors for work performed, the Respondents demonstrated that they were

incompetent, untrustworthy, and financially irresponsible in violation of Minn. Stat. § 326.91, subds. 1(6) and 4 (Counts 6 & 7).

10. The imposition of discipline and/or civil penalties against the Respondents is in the public interest.

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

### **RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner of Labor and Industry take disciplinary action and assess appropriate civil penalties against the Respondents.

Dated this 14th day of February, 2006

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s/Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
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.

<sup>[1]</sup> Prehearing Order, October 6, 2005.

<sup>[2]</sup> Letter dated January 23, 2006, from the Administrative Law Judge to Christopher M. Kaisershot and David E. Albright.

<sup>[3]</sup> Minn. Stat. § 326.91, subd. 1(2) (2004).

<sup>[4]</sup> Minn. R. 2891.0040, subp. 1E, IF, IG, and IH (2005).

<sup>[5]</sup> Minn. Stat. § 326.84, subds. 1 and 1b.

<sup>[6]</sup> Minn. Stat. § 326.91, subd. 1(5).

<sup>[7]</sup> Minn. Stat. § 326.91, subd. 4.

<sup>[8]</sup> Minn. Stat. § 326.91, subds. 1(6) and 4.