

BC2503816/CMW  
BC2503718/CMW  
BC2504769/CMW

[Link to Final Agency Decision](#)  
15-1902-16819-2

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

In the Matter of the Residential  
Contractor License of Eric Campbell

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger (“ALJ”) on October 18, 2005 for a prehearing conference at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Order of Prehearing Conference, Order to Show Cause, and Statement of Charges, dated September 15, 2005.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (“Department”). The Respondent, Eric Campbell, did not appear in person or by counsel. The record closed upon the Respondent’s default on October 18, 2005.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner’s decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) 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, Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, 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. 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, 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, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

### **STATEMENT OF ISSUE**

1. Did the Respondent fail to respond to the Department's requests for information and Order to Appear, in violation of Minn. Stat. § 45.027, subd. 1a?

2. Did the Respondent provide false and misleading information on his renewal application, in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1a?

3. By failing to complete work and performing defective work, did Respondent perform in breach of contract, in violation of Minn. Stat. § 326.91, subd. 1(4)?

4. By issuing an insufficient funds check for his license renewal and failing to use the proceeds of the Bendickson payment to order materials for the Bendickson project, did Respondent demonstrate financial irresponsibility, in violation of Minn. Stat. § 326.91, subd. 1(6)?

5. By failing to maintain general liability insurance, did Respondent demonstrate incompetence, untrustworthiness and financial irresponsibility, in violation of Minn. Stat. §§ 326.94, subd. 2(6) and 326.91, subd. 1(6), and Minn. R. 2891.0050, subp. 1A?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On September 19, 2005, the Department served the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges on the Respondent by first class mail, addressed to Eric Campbell, c/o Eric Campbell Construction, 809 North 7<sup>th</sup> Street, Montevideo, MN 56265-1343. The mailing was not returned to the Department.

2. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and it did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the 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.

4. Because Respondent failed to appear, he is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

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

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2004).

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. The Respondent failed to respond to the Department's requests for information and Order to Appear, in violation of Minn. Stat. § 45.027, subd. 1a.

7. The Respondent provided false and misleading information on his renewal application, in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1a.

8. The Respondent failed to complete work and performing defective work in breach of contract, in violation of Minn. Stat. § 326.91, subd. 1(4).

9. By issuing an insufficient funds check for his license renewal and failing to use the proceeds of the Bendickson payment to order materials for the Bendickson project, the Respondent demonstrated financial irresponsibility, in violation of Minn. Stat. § 326.91, subd. 1(6).

10. By failing to maintain general liability insurance, the Respondent demonstrated incompetence, untrustworthiness and financial irresponsibility, in violation of Minn. Stat. §§ 326.94, subd. 2(6) and 326.91, subd. 1(6), and Minn. R. 2891.0050, subp. 1A.

11. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

**RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Labor and Industry take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 9th day of November, 2005.

/s/ Beverly Jones Heydinger  
\_\_\_\_\_  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Default (no tapes)