

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

In the Matter of the Certificate of
Exemption of Terry J. Johnson,
Certificate No. 20324542

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above matter came on for a prehearing conference before Administrative Law Judge Steve M. Mihalchick on December 9, 2005 at 3:30 p.m. 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 Terry J. Johnson. The last known address for Terry J. Johnson is 3505 Belknap Street, Lot 14, Superior, WI 54880. The record closed on December 9, 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 Terry J. Johnson for engaging in fraudulent, deceptive, or dishonest practices by: (1) failing to disclose his criminal history on his application for a Certification of Exemption, and (2) representing to the public that he is a licensed builder, both in violation of Minn. Stat. § 326.91, subd. 1(2), and whether Johnson's Certificate of Exemption should be revoked or suspended?

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

FINDINGS OF FACT

1. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges initiating this contested case proceeding was served on the Respondent, Terry J. Johnson, via first class mail on October 19, 2005, at the following address: 3505 Belknap Street, Lot 14, Superior, WI 54880.¹

2. The Notice of Hearing includes the following additional notice:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.²

3. The Respondent did not appear at the prehearing conference on December 9, 2005, nor did anyone appear on his 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 and 7, and 326.91.

¹ Affidavit of Service by First Class Mail of Jean-Anne Gates attached to Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges (Notice of Hearing).

² Notice of Hearing, at 4.

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. § 326.91, subd. 1(2).

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 foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against Terry J. Johnson.

Dated: December 22, 2005

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default (no tape recordings)

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.