

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Waby Construction,
Inc.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for a Prehearing Conference and Hearing before Administrative Law Judge Richard C. Luis on February 15, 2006 and July 25, 2006. The record remained open until November 21, 2006 for the filing of additional documents.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). Ahmed A. Sonbol, President, Waby Construction, Inc., 1420 Fairlawn Way, Golden Valley, MN 55416, appeared on behalf of Waby Construction, Inc. ("Licensee", "Respondent").

STATEMENT OF THE ISSUE

1. Whether the Respondent has demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6) by failing to satisfy a 2003 judgment against Waby Construction in favor of Bruce Banks?

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

FINDINGS OF FACT

1. Sometime in 2001, Bruce Banks, the Complainant in this matter, contracted with Waby Construction for Waby to build him a home in Champlin, Minnesota. The agreed-upon price was \$472,880.00.¹

¹ Ex. 1 – Findings of Fact, Conclusions of Law, Order for Judgment, Judgment and Decree (5/21/03).

2. In connection with construction of the Banks house, Waby contracted with Williams Roofing and Siding Company to perform certain tasks related to construction of the house, including the installation of siding. Williams negligently installed the siding, using staples rather than nails to secure the siding to the home. The cost to correct the negligent installation of siding was \$19,500.00.²

3. Bruce Banks and defendants Waby Construction and Ahmed Sonbol arrived at a settlement of all issues between them, and Defendant Ahmed Sonbol signed a Confession of Judgment on January 28, 2003.³

4. On May 21, 2003, Hennepin County District Judge Ann L. Alton issued Findings of Fact, Conclusions of Law, and Order for Judgment and a Judgment and Decree against Waby Construction and Ahmed Sonbol, in which she concluded that Waby Construction was vicariously liable to Bruce Banks for the negligent installation of the siding installed by its subcontractor Williams Roofing and Siding Company.⁴

5. In June 2005, Mr. Banks filed a complaint with the Minnesota Department of Labor and Industry, alleging that Waby Construction has failed to satisfy the judgment against it and in his favor, as described in the preceding Findings.⁵

6. Investigation by the Department revealed that Mr. Banks obtained a judgment against Waby Construction in September 2003 in the amount of \$20,154.50. The judgment was docketed in Hennepin County District Court on October 22, 2003. To date, Waby Construction has failed to satisfy the judgment.⁶

7. As of the date of the hearing, the Licensee/Respondent has made no payments to satisfy the judgment in favor of Mr. Banks, nor have the parties entered into a payment schedule.

8. Mr. Sonbol inspected the house in Champlin that Waby Construction built for Bruce Banks recently, and found that the siding was in good condition. He has contested this adverse license action as a “matter of honor”, and maintains that there is “bad blood” between himself and Mr. Banks’s attorney. He did not appeal the 2003 judgments against him because “I wasn’t willing to spend the money, thousands of dollars, it costs too much to appeal”.

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

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges (10/31/05).

⁶ *Id.*

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction herein pursuant to Minn. Stat. §§ 14.50, 326.91 and 326.92.

2. The Licensee/Respondent has not appealed the 2003 judgments in the matter of *Bruce Banks v. Waby Construction and Ahmed Sonbol*. Those judgments have become final.

3. The Licensee/Respondent has not satisfied the 2003 judgments, nor has it entered into a payment schedule or made any payments in satisfaction of the 2003 judgments, despite Mr. Sonbol’s having signed a Confession of Judgment in January, 2003. This inactivity demonstrates financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6).

4. Because the Licensee/Respondent has been shown to be financially irresponsible, disciplinary action against its license by the Commissioner of Labor and Industry is appropriate.

5. An Order by the Commissioner of Labor and Industry imposing disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. §§ 45.027, subd. 7(a)(1) and 326.91, subd. 1.

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

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against the license of Waby Construction, Inc.

Dated this 20th day of December, 2006.

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

Reported: Taped

NOTICE

This report is a recommendation, not a final decision. The Commissioner 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. In order to comply with this statute, 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. 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.

MEMORANDUM

The Administrative Law Judge notes that Mr. Sonbol has been very accommodating in connection with this proceeding during its pendency since the fall of 2005. During most of the time since the service of the Notice of and Order for Hearing in this matter, Mr. Sonbol has been in the Kingdom of Saudi Arabia, working as an engineer on various construction projects. He participated in both of the proceedings in this case by telephone from Saudi Arabia, and the Administrative Law Judge appreciates Mr. Sonbol's candor and cooperation.

Mr. Sonbol has made it very apparent that he is aggrieved and insulted by allegations that he or his company are financially irresponsible. He has been steadfast in maintaining that there is no problem with the siding on Mr. Banks's house in Champlin, and that the claim against him and his company has been "hokus" from the start.

The Administrative Law Judge agreed to leave the record open for a time sufficient for Mr. Sonbol to seek the advice of counsel. He has done that, and has filed several written arguments, all of which attack the merits of the claim on which the Licensee and Mr. Sonbol reached settlement over three years ago. None of Mr. Sonbol's legal advisors have informed the Administrative Law Judge of current efforts to vacate the judgment in honor of Mr. Banks or to revisit the merits of the underlying case. The problem faced at this juncture by Mr. Sonbol and Waby Construction is that neither he nor his company took the opportunity to appeal the judgment in 2003, which was the only route available to them legally

to preserved their arguments. Any means of re-opening the judgment or the merits of the underlying claim now have been lost by the passage of time. What remains is a record that indicates clearly that Mr. Sonbol and Waby Construction agreed to a settlement with Mr. Banks and signed a Confession of Judgment in Mr. Banks's favor early in 2003, and that the judgment has not been satisfied in any way. Those facts demonstrate financial irresponsibility within the meaning of Minn. Stat. § 326.91, subd. 1(6). It now is appropriate to impose appropriate discipline against the license of Waby Construction.

R. C. L.