

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

In the Matter of Pacesetter  
Corporation  
of America

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on February 2, 2006, at the Office of Administrative Hearings in Minneapolis.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry ("the Department"). There was no appearance by or on behalf of Pacesetter Corporation of America, 4343 South 96<sup>th</sup> Street, Omaha, NE 68127. The OAH record closed on March 6, 2006, upon the filing of an Amended Affidavit of Service by the Department.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota 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 Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

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, 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.

## **STATEMENT OF ISSUES**

The issue presented in this case is whether Pacesetter Corporation of America failed to cancel two contracts and issue refunds to the homeowners, failed to provide written responses to the Department's requests for information, and failed to appear at the Department as ordered and, if so, whether it is appropriate to take disciplinary action against the residential building contractor license held by Pacesetter Corporation of America under Minn. Stat. §§ 45.027, subs. 1a and 2, and 326.91, subd. 1(6).

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

## **FINDINGS OF FACT**

1. On December 22, 2005, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges ("Notice of Hearing") in this matter was mailed to Pacesetter Corporation of America. by first class mail to the following address: Pacesetter Corporation of America, 4343 South 9<sup>th</sup> Street, Omaha, NE 68127.<sup>[1]</sup> The Notice of Hearing indicated that a Prehearing Conference would be held in this matter on February 2, 2006.<sup>[2]</sup>

2. The Notice of Hearing in this matter includes the following statement:

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.<sup>[3]</sup>

3. No one appeared at the February 2, 2006, prehearing conference on behalf of Pacesetter Corporation of America. No prehearing request was made for a continuance, nor did anyone file a Notice of Appearance on behalf of Pacesetter Corporation of America.

4. The Notice of Hearing alleges that the Department received complaints from two Minnesota homeowners in August 2005 and October 2005 alleging that they had provided down payments to Pacesetter Corporation of America for new doors and new windows and had subsequently cancelled their orders and requested their money back, but had not received refunds. The Notice also alleges that Pacesetter Corporation of America failed to respond to requests for information relating to the first complaint sent by the Department in

August and September of 2005 and failed to appear for questioning in response to an Order to Appear issued by the Department on September 26, 2005.

5. The allegations contained in the Notice of Hearing are deemed proved and are incorporated into these Findings by reference.

6. The taking of disciplinary action against Pacesetter Corporation of America is in the public interest.

Based on the foregoing Findings, 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, subds. 6 and 7, and 326.91.

2. Pacesetter Corporation of America was given timely and proper notice of the Prehearing Conference in this matter. The Department has complied with all procedural requirements of law and rule.

3. Under Minn. Rule 1400.6000, Pacesetter Corporation of America is in default as a result of its failure to appear at the scheduled Prehearing Conference.

4. Under Minn. Rule 1400.6000, the allegations and issues set out in the Notice may be taken as true or deemed proved when a party defaults.

5. Based on the facts set out in the Notice of Hearing, Pacesetter Corporation of America has demonstrated financial irresponsibility and untrustworthiness by failing to cancel the contracts and issue refunds in violation of Minn. Stat. § 326.91, subd. 1(6), and has failed to provide a written response to the Department's requests for information and to appear at the Department as ordered in violation of Minn. Stat. 45.027, subds. 1a and 2.

6. Disciplinary action against the residential building contractor license of Pacesetter Corporation of America 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 disciplinary action be taken against the residential building contractor license of Pacesetter Corporation of America.

Dated: March 15, 2006

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Default (no transcript prepared).

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<sup>[1]</sup> See Amended Affidavit of Service by First Class Mail of Jean-Anne Gates dated March 3, 2006. The original Affidavit of Service filed in this matter (which was attached to the Notice of Hearing) indicated that the envelope containing the Notice of Hearing was addressed to the Respondent at the same street address mentioned above in "Omaha, **MN** 68127." The Amended Affidavit indicates that the reference to "MN" in the original Affidavit of Service was a typographical error and states that the envelope containing the Notice of Hearing was actually mailed on December 22, 2005, to the Respondent's address in "Omaha, **NE** 68127."

<sup>[2]</sup> Notice of Hearing, p. 1.

<sup>[3]</sup> Notice of Hearing, p. 4, ¶ 1.