

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

In the Matter of Margo Sampsell,
individually, and d/b/a/ Home
Maintenance Services

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger (“ALJ”) on February 24, 2006 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 and Notice of Prehearing Conference, dated January 11, 2006.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, Saint Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (“Department”). The Respondent, Margo Sampsell, did not appear in person or by counsel. The record closed upon the Respondent’s default on February 24, 2006.

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⁽¹⁾, 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, Minnesota Department of Labor and Industry, 443 Lafayette Road, Saint Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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. 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.

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.

STATEMENT OF ISSUE

1. By entering into contracts exceeding \$15,000, did Respondent engage in unlicensed residential building contractor activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1a, and 326.842?

2. By advertising in the Austin Daily Herald that she was licensed by the Department when she was not, did Respondent engage in fraudulent, deceptive, and dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1B?

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

FINDINGS OF FACT

1. On January 12, 2006, a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges was sent to Margo Sampsell, at the address on file with the Department, 910 8th Avenue SW, Austin, MN 55912, as appears from an Affidavit of Mailing on file herein. The copy was returned to the Department as not deliverable. According to the Department's files, the same address was used by Respondent to apply for building permits in Austin, Minnesota.

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, she is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference 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 Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 326.92, 45.027, subd. 1, 45.024, and 14.50 (2004).^[2]

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. Respondent is required to file an accurate address with the Department. 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. By entering into contracts exceeding \$15,000, Respondent engaged in unlicensed residential building contractor activities in violation of Minn. Stat §§ 326.84, subds. 1 and 1a.

7. By advertising in the Austin Daily Herald that she was licensed by the Department when she was not, Respondent engaged in fraudulent, deceptive, and dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1B.

8. The Department has failed to allege facts that would imply that the Respondent has engaged in activity as a roofer. Thus, there is no basis to conclude that there has been a violation of Minn. Stat. § 326.842.

9. 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 Minnesota Department of Commerce take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 27th day of February, 2006.

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

Reported: Default (no tapes)

MEMORANDUM

When a Respondent has defaulted, the factual allegations alleged by the Department may be accepted as true, and if any reasonable reading of the facts will support the legal conclusion, the alleged violation will be upheld.^[3] The Department alleged facts that support the violations of Minn. Stat. § 326.84, subd. 1 and 1a, as well as Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1B. In each instance the Department alleged sufficient facts to support the legal conclusion. However, the Department has failed to allege facts that, if proven, would lead to the conclusion that there has been a violation of Minn. Stat. § 326.842. That provision states: "Roofers are subject to all of the requirements of sections 326.83 to 326.98 and 326.991, except the recovery fund in section 326.975."

The Statement of Charges contains no reference to any work by the Respondent as a roofer, or any basis to conclude that this provision has been violated. The only references are to construction of a deck and a garage. The garage work may have included roofing, but there was no allegation made that could support that legal conclusion. In addition, the advertisement placed by the Respondent does not include roofing. Thus, the alleged facts do not support the conclusion that the Respondent violated Minn. Stat. § 326.842.

B.J.H.

^[1] Unless otherwise noted, the 2004 Minnesota statutes and the 2005 Minnesota rules apply.

^[2] On May 16, 2005, the Governor signed Executive Order 193, transferring the responsibility for regulation of residential building contractors to the Commissioner of Labor and Industry from the Commissioner of Commerce.

^[3] Minn. R. 1400.6000.