

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

In the Matter of Home Update Co., LLC,  
a/k/a Home Update Company

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy on March 24, 2006, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed at the conclusion of the prehearing conference.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (the Department).

There was no appearance by the Respondent, Home Update Co., LLC, a/k/a Home Update Company, 4517 Minnetonka Boulevard, St. Louis Park, MN 55416, or by Respondent's counsel, Eric J. Rucker, Briggs and Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402.

**NOTICE**

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. § 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. 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 issues presented in this case are whether the Respondent is subject to discipline and/or civil penalties because:

(1) Respondent engaged in unlicensed residential building contractor activity in connection with the Caverly project, in violation of Minn. Stat. § 326.84, subds. 1 and 1a (2004), and Minn. R. 2891.0040, subp. 1F (2005);

(2) Respondent engaged in unlicensed residential building contractor activity in connection with the Walker project, in violation of Minn. Stat. § 326.84, subds. 1 and 1a, and Minn. R. 2891.0040, subp. 1F;

(3) Respondent misrepresented the scope and costs of the services offered in the Caverly contracts and thereby engaged in fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1C;

(4) Respondent undervalued the cost of the Caverly and Walker projects in obtaining construction permits from Minneapolis and Richfield, thereby engaging in fraudulent, deceptive or dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1D;

(5) Respondent performed unlicensed plumbing work, thereby engaging in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1G;

(6) Respondent failed to obtain the required plumbing permit and inspections on the Caverly project and failed to make the required corrections and obtain final inspections on the Caverly project, thereby engaging in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H;

(7) Respondent failed to reasonably supervise its employees, salespersons or subcontractors resulting in substandard workmanship and building code violations on the Caverly project, in violation of Minn. Stat. § 326.91, subd. 1(4);

(8) Respondent demonstrated untrustworthiness and financial irresponsibility by executing the June 3, 2005 work order on the Caverly project with a grossly inflated price, in violation of Minn. Stat. § 326.91, subd. 1(6), and Minn. R. 2891.0050, subp. 2;

(9) Respondent failed to maintain general liability insurance, thereby demonstrating incompetence, untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 326.94, subd. 2, and Minn. R. 2891.0050, subp. 1A;

(10) Respondent failed to comply with a June 2002 Consent Order by failing to include start and completion dates in several of its contracts, in violation of Minn. Stat. § 326.91, subd. 1(5);

(11) Respondent entered into a contract with Walker at a price that grossly inflated the value of the project, thereby engaging in a fraudulent, deceptive and dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn R. 2891.0040, subp. 1C; and

(12) Respondent used funds obtained from the Caverlys for personal purposes, demonstrating financial irresponsibility in violation of Minn. Stat. § 45.027, subd. 7(4) and 326.91, subd. 1(6).

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

**FINDINGS OF FACT**

1. On February 3, 2006, the Commissioner of Commerce issued a Notice and Order for Hearing, Order for Prehearing conference, and Statement of Charges (Notice and Order for Hearing) in this matter. The Department served the Notice and Order for Hearing on the Respondent by first-class mail that day, addressed to Home Update Co., LLC, a/k/a Home Update Company, 4517 Minnetonka Boulevard, St. Louis Park, MN 55416; Rick Gurewitz, 2900 Thomas Avenue South, No. 1825, Minneapolis, MN 55416; and on Respondent's counsel, Eric Rucker, Esq., Briggs & Morgan, PA, 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-2157.

2. The Prehearing Conference was scheduled to take place at 1:30 p.m. on March 24, 2006, at the Office of Administrative Hearings.

3. The Notice and Order for Hearing contained the following language:

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.

4. On March 10, 2006, Respondent's counsel sent a letter to the Administrative Law Judge and counsel for the Department, which provided that the Respondent was not intending to appear at the prehearing conference or to defend this action going forward. The letter further provided that the Department could proceed without Respondent or Respondent's counsel being present.

5. In accordance with the above letter, the Respondent failed to appear for the prehearing conference on March 24, 2006. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges at paragraphs 1-21 are hereby taken as true and incorporated into these Findings of Fact.

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, 326.91, subd. 4, and 326.92, subd. 3.

2. The Notice and Order for Hearing issued by the Department was proper, and the Department has fulfilled all relevant procedural requirements of law and rule.

3. The Respondent is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges are hereby taken as true.

4. Respondent engaged in unlicensed residential building contractor activity in connection with the Caverly and Walker projects, in violation of Minn. Stat. § 326.84, subds. 1 and 1a (2004), and Minn. R. 2891.0040, subp. 1F (2005) (Counts 1 and 2).

5. Respondent engaged in conduct demonstrating untrustworthiness by entering into contracts with the Caverlys and Walker at grossly excessive prices for the work proposed, in violation of Minn. Stat. § 326.91, subd. 1(6), and Minn. R. 2891.0050, subp. 2 (Counts 3, 8 and 11).

6. Respondent undervalued the amount of the Caverly and Walker contracts in obtaining construction permits from Minneapolis and Richfield, thereby engaging in fraudulent, deceptive or dishonest practices in the execution of a document incident to a building transaction, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1D (Count 4).

7. Respondent performed unlicensed plumbing work, thereby engaging in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1G (Count 5).

8. Respondent failed to obtain the required inspections on the Caverly project, thereby engaging in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1H (Count 6).

9. Respondent failed to reasonably supervise its employees, salespersons or subcontractors resulting in substandard workmanship and building code violations on the Caverly project, in violation of Minn. Stat. § 326.91, subd. 1(4) (Count 7).

10. Respondent failed to maintain general liability insurance, thereby demonstrating incompetence, untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 326.94, subd. 2, and Minn. R. 2891.0050, subp. 1A (Count 9).

11. Respondent failed to comply with a June 2002 Consent Order by failing to include start and completion dates in several of its contracts, in violation of Minn. Stat. § 326.91, subd. 1(5) (Count 10).

12. Respondent spent some of the excessive funds collected from the Caverlys on meals, sporting events, vacations, and other forms of conspicuous consumption, demonstrating financial irresponsibility in violation of Minn. Stat. § 45.027, subd. 7(4) and 326.91, subd. 1(6) (Count 12).

13. The imposition of discipline and/or civil penalties against the Respondent is in the public interest.

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

**RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner of Labor and Industry take disciplinary action and assess appropriate civil penalties against the Respondent.

Dated this 31st day March, 2006.

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Default

**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.