

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

In the Matter of Timothy Edward Winkels, individually and d/b/a Winkels Siding, Decks & Roofing, Inc.	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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The above matter came on for a Prehearing Conference before Administrative Law Judge (“ALJ”) Richard C. Luis at 2:00 p.m. on April 13, 2006 at the Office of Administrative Hearings in Minneapolis. Christopher M. Kaisershot, 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”). There was no appearance by or on behalf of the Respondent, Timothy Edward Winkels, d/b/a Winkels Siding, Decks & Roofing, Inc. The hearing record closed on April 13, 2006.

**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. 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.

### **STATEMENT OF ISSUE**

Whether disciplinary action should be taken against Respondent Timothy Edward Winkels, d/b/a Winkels Siding, Decks & Roofing, Inc., for violating Minn. Stat. §§ 45.027, subd. 7(a)(2) and 326.91, subds. 1(5) and 4 by engaging in unlicensed residential building contractor, residential remodeler, and/or roofer activities in violation of a Cease and Desist Order issued on December 16, 1999; and/or for violating Minn. Stat. §§ 326.84, subds. 1 and 1b, 326.842 and 326.91, subds. 1(5) and 4 by engaging in unlicensed residential building contractor or residential remodeler activities; and/or for violation of Minn. Stat. § 326.91, subds. 1(2) and 4 and Minn. R. 2891.0040, subp. 1H by engaging in a fraudulent, deceptive or dishonest practice in telling one of his customers that he was licensed and charging them for a permit that he never obtained; and/or for violating Minn. Stat. § 326.91, subds. 1(4) and 4 by performing negligently or in breach of contract when he damaged a customer's property while attempting to install a suspended ceiling and failed to complete the project; and/or for violating Minn. Stat. § 326.91, subds. 1(6), 1(8) and 4 by performing in an incompetent and untrustworthy or financially irresponsible manner when he failed to pay one of his subcontractors for work performed despite receiving full payment for the job from his customers.

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

### **FINDINGS OF FACT**

1. On March 9, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges in this matter was mailed to the Respondent at his last known address, to: Timothy Edward Winkels, Winkels Siding, Decks & Roofing, Inc., 909 Jefferson, Eyota, MN 55934. That mailing was not returned. Notice was mailed also to: Timothy Edward Winkels, Winkels Siding, Decks & Roofing, Inc., 537 Second Avenue N.W., #3, Rochester, MN 55901. That mailing was returned to the Office of the Attorney General. The Notice scheduled a Prehearing Conference for April 13, 2006.

2. The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges contains the following language, on page four:

1. 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 that its proposed disciplinary action may be upheld.

3. The Respondent did not appear at the April 13, 2006 Prehearing Conference. He did not contact the Department, the Office of the Attorney General or

the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Respondent.

4. The allegations set forth in the Notice of and 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 herein pursuant to Minn. Stat. §§ 14.50, 326.91 and 326.92.

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

3. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled Prehearing Conference.

4. Under Minn. R. 1400.6000, when a party defaults, 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 and deemed proven. The Administrative Law Judge therefore takes those allegations and issues as true, and they are deemed proven.

5. Based on the facts as set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, the Respondent has engaged in unlicensed residential contractor or residential remodeler activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, 326.842 and 326.91, subds. 1(5) and 4; has engaged in unlicensed residential building contractor, residential remodeler and/or roofer activities in violation of a Cease and Desist Order issued by the Commissioner on December 16, 1999, which violates Minn. Stat. §§ 45.027, subd. 7(a)(2) and 326.91, subds. 1(5) and 4; has told his customers that he was licensed and charged them for a permit that was never obtained, thus engaging in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 326.91, subds. 1(2) and 4 and Minn. R. 2891.0040, subp. 1H; damaged a customer's property while attempting to install a suspended ceiling and failed to complete the project, thus performing negligently or in breach of contract in violation of Minn. Stat. § 326.91, subds. 1(4) and 4; and failed to pay a subcontractor for work performed despite having received full payment from his customers in connection with the same job, which action was incompetent, untrustworthy or financially irresponsible in violation of Minn. Stat. § 326.91, subds. 1(6), 1(8) and 4.

6. 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(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 Timothy Edward Winkels, individually and d/b/a Winkels Siding, Decks & Roofing, Inc.

Dated this 17th day of April 2006.

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

Reported: Default