

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

In the Matter of Kenneth Joseph Hunter

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-matter came on for a hearing before Administrative Law Judge Steve M. Mihalchick on July 26, 2006, at 9:00 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The hearing record closed at the conclusion of the hearing on July 26, 2006.

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

Respondent Kenneth Joseph Hunter, 1539 Cedar Lane, Newport, MN 55055, appeared on his own behalf.

**STATEMENT OF ISSUES**

1. Did Respondent engage in unlicensed residential building contractor activities in violation of Minn. Stat. § 326.84, subds 1 and 1a?

The Administrative Law Judge (ALJ) concludes that the Respondent engaged in unlicensed residential building contractor activity.

2. Did Respondent violate a Consent Cease and Desist Order in violation of Minn. Stat. § 45.027, subd. 5a?

The ALJ concludes that the Respondent violated the Cease and Desist Order.

3. Did Respondent demonstrate financial irresponsibility by filing a lien on a residential property when he did not have license in violation of Minn. Stat. § 326.91, subd. 1(6)?<sup>[1]</sup>

The ALJ concludes that the Respondent has demonstrated financial irresponsibility.

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

### FINDINGS OF FACT

1. Kenneth Hunter is not currently licensed by the Department.<sup>[2]</sup> Kenneth Hunter is not listed as the qualifying person for any licensee.<sup>[3]</sup>
2. Mr. Hunter held a Certificate of Exemption issued by the Department from January 13, 1999 through March 31, 2000.<sup>[4]</sup> Certificates of Exemption permit certificate holders to engage in limited contracting activities that do not exceed \$15,000 in a calendar year.<sup>[5]</sup>
3. On June 2, 2000, after the Certificate of Exemption had expired, Mr. Hunter, doing business as "Hunter Construction" at 1785 Stillwater Street, White Bear Lake, MN 55110, entered into a contract with a homeowner to build a new addition for a total contract price of \$129,000. On July 14, 2003, the Department issued a Cease and Desist Order against Mr. Hunter prohibiting him from engaging in unlicensed residential building contractor activities.<sup>[6]</sup> The Cease and Desist Order was directed to Ken Hunter individually and doing business as "Hunter Construction".<sup>[7]</sup>
4. The Department's records show that a Residential Building Contractor License has been issued to "Hunter Construction, Inc.," license number 20320593, since August 9, 2002.<sup>[8]</sup> Hunter Construction, Inc.'s office is located at 6015 Asher Ct., Inver Grove Heights, Minnesota 55077.<sup>[9]</sup> The qualifying person for Hunter Construction, Inc. is Robert Hunter.<sup>[10]</sup> Robert Hunter is the brother of Kenneth Hunter.<sup>[11]</sup>
5. Kenneth Hunter has worked for Hunter Construction, Inc., in various capacities.<sup>[12]</sup> Margaret Hunter is the mother of Robert and Kenneth Hunter and does accounting for Hunter Construction, Inc.<sup>[13]</sup> Neither Robert Hunter nor Margaret Hunter testified at the contested hearing.
6. On September 7, 2004, David and Heidi Moss entered into a contract with Ken Hunter and "Hunter" to demolish an existing structure and build a new addition to the Moss home.<sup>[14]</sup> The contract stated that "Hunter's" business address was 1785 Stillwater St., White Bear Lake, MN 55110. Ken Hunter signed the contract. There is no reference on the contract to "Hunter Construction, Inc.," nor is there any indication that Ken Hunter was signing the contract in any representative capacity for Hunter Construction, Inc.
7. The contract was for building an addition, roofing and installation of siding. The construction of the addition portion of the contract called for the demolition of an existing structure and construction of the addition. It also provided for the installation of 15 windows, hand framing of roof trusses, and other work. The total price for this portion of the contract was of \$44,500.<sup>[15]</sup> The contract required a \$34,000 down payment and \$5,000 after window delivery,

with the balance upon completion. The second portion of the contract provided for removal of existing roofing and installation of new roofing material. The contract price for roofing was \$7,800, \$6,000 down with the balance due upon completion. The third portion of the contract was for installation of vinyl siding. The total cost was \$10,700, \$8,000 down with the balance due upon completion. The total contract price for all three portions of the contract was \$63,000.<sup>[16]</sup>

8. Between September 7, 2004 and April 11, 2005, Heidi Moss issued nine checks totaling \$60,413.27 payable to Ken and Kenneth Hunter or "Hunter."<sup>[17]</sup> These nine checks are listed below.

Check	Date	Amount	Payee	Endorsed by	Check Memo
8272	9/7/2004	30,000.00	Hunter	Margaret Hunter	Addition
8274	9/7/2004	4,000.00	Kenneth Hunter	Ken Hunter	Addition
8437	11/28/2004	6,000.00	Hunter	Margaret Hunter	roofing
8464	12/17/2004	4,000.00	Ken Hunter	Ken Hunter	none
8483	12/28/2004	4,000.00	Hunter	Margaret Hunter	none
8580	2/15/2005	1,000.00	Kenneth Hunter	Ken Hunter	none
8594	2/28/2005	6,000.00	Hunter	Margaret Hunter	house remodeling
8635	4/11/2005	955.00	Kenneth Hunter	Ken Hunter	windows
8636	4/11/2005	4,458.27	Hunter	Margaret Hunter	framing

9. The four checks payable to Kenneth Hunter total \$9,955. The memo line for two of these checks indicates that they were payment for the addition and windows. Two of the checks payable to Kenneth Hunter, numbers 8580 and 8635, were endorsed by Mr. Hunter payable to his fiancée.<sup>[18]</sup> The remaining five checks were payable to "Hunter" and total \$50,458.27. Memos on the checks payable to "Hunter" indicate that they were for the addition, roofing, and framing.<sup>[19]</sup>

10. When Heidi Moss paid the \$34,000 down payment on September 7, 2004, required by the demolition/addition portion of the contract, she wrote two checks, one for \$4,000 to Ken Hunter and the other to "Hunter" for \$30,000. On both of these checks Ms. Moss wrote the word, "Addition." Ms. Moss again wrote two checks on April 11, 2005, one to Ken Hunter and one to Hunter.

11. On October 27, 2005, Ken Hunter filed a Mechanics Lien Statement in Chisago County for \$6,500 against the home of David and Heidi Moss.<sup>[20]</sup> The name and mailing address on the Lien Statement was "Ken Hunter 6020 Asher Ct, Inver Grove Hts, MN 55055."<sup>[21]</sup>

12. On January 2, 2006, David and Heidi Moss filed a complaint against Ken Hunter and Hunter with the Department of Commerce.<sup>[22]</sup>

13. Greg Lecuyer is a senior investigator with Department of Labor and Industry.<sup>[23]</sup> Following an investigation by Mr. Lecuyer, the Department issued the Notice of and Order for Hearing in this matter on March 22, 2006.

14. Ken Hunter contends that he is an employee or associate of Hunter Construction, Inc., and that his activity is therefore covered by the Residential Contractor License issued to Hunter Construction, Inc.<sup>[24]</sup>

15. The contract signed by Ken Hunter with David and Heidi Moss refers to "Hunter" not "Hunter Construction, Inc." "Hunter" is not "Hunter Construction, Inc." and that Ken Hunter did not contract as an agent for "Hunter Construction, Inc." The business address stated on the contract is for the same White Bear Lake address used by Mr. Hunter in 2002 when the Cease and Desist Order was issued. There is no reference on the contract to the Inver Grove Heights business address of "Hunter Construction, Inc." The Mechanics Lien filed by Ken Hunter in Chisago County did not use the name or business address of "Hunter Construction, Inc." The five checks written by Heidi Moss are payable to "Hunter" not "Hunter Construction, Inc."

16. Even if the checks payable to "Hunter" are ignored, the remaining four checks payable to Ken Hunter demonstrate that Ken Hunter engaged in unlicensed contracting activity. During calendar year 2004, Mr. Hunter received \$8,000 for contracting activity associated with the Moss contract during 2004 and \$1,955 during calendar year 2005.<sup>[25]</sup>

17. Kenneth Hunter engaged in unlicensed residential building contractor activity.

18. Mr. Hunter filed the Mechanic's Lien Statement in Chisago County when he was unlicensed.

19. Mr. Hunter was served with the Notice and Order for Hearing by mail on March 22, 2006.

20. The prehearing conference was held as scheduled on May 4, 2006.

21. The hearing was held on July 26, 2006.

22. At the hearing, the Department withdrew Counts III, and County V, which related to misrepresentation by Mr. Hunter to the Mosses and failure to complete failing to complete the Moss contract.

Based upon the foregoing Findings of Fact, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Commissioner of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 45.027, 326.91, and 14.50.

2. The Respondent was given timely and proper notice of the hearing in this matter.

3. The Department has complied with all procedural requirements of law.

4. The Department must prove by a preponderance of the evidence that the alleged violations occurred.<sup>[26]</sup>

5. Minn. Stat. § 326.84, subd. 1, requires residential building contractors to be licensed. Residential building contractors may not perform work without a valid license. Subdivision 1a of section 326.84 provides that specialty contractors may be licensed as residential building contractors or residential remodelers unless they are required to be licensed as specialty contractors.

6. A residential building contractor contracts to build or improve residential real estate by providing two or more special skills, including carpentry, masonry and concrete, interior finishing, exterior finishing, drywall and plaster. All roofers must be licensed.<sup>[27]</sup>

7. By offering and agreeing to perform carpentry, (demolishing and framing), exterior finishing, (siding) and roofing, Respondent engaged in unlicensed residential building contractor activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1a.

8. By offering and agreeing to perform residential building contractor work after the date of the Consent Cease and Desist Order, the Respondent violated Minn. Stat. § 45.027, subd. 5a.

9. By filing a lien on the Moss property without a license, Respondent demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6).

10. The imposition of discipline and 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: August 15, 2006

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Tape-Recorded (one tape);  
No Transcript Prepared.

## MEMORANDUM

Respondent admits that he has engaged in contracting activity but contends that his activity is covered by the Residential Building Contractor License issued to Hunter Construction, Inc.

Respondent's contention that Hunter Construction, Inc. participated in the David and Heidi Moss residential remodeling contract is not supported by the evidence. The Moss contract does not mention Hunter Construction Inc., nor does it use the licensee's business address. None of the checks issued by Heidi Moss are payable to Hunter Construction, Inc. The Mechanics Lien Statement filed by Kenneth Hunter refers only to Mr. Hunter; it does not mention Hunter Construction, Inc. nor does it state the correct business address.

Based on this evidence, the Administrative Law Judge concludes that Kenneth Hunter was operating his own contracting business and was not performing as an employee of Hunter Construction, Inc.. Kenneth Hunter violated the Cease and Desist Order, and by filing a Mechanic's Lien Statement without a license, further violated the law.

**S. M. M.**

## 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 Recommended Decision. 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, Deputy Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road North, 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.

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<sup>[1]</sup> At the hearing, Department dropped Counts 3 and 5 that it had initially brought against the Respondent.

<sup>[2]</sup> Testimony of Greg Lecuyer.

<sup>[3]</sup> *Id.*, Ex. 1.

<sup>[4]</sup> Ex. 1.

<sup>[5]</sup> Minn. Stat. § 326.84.

<sup>[6]</sup> *Id.*

<sup>[7]</sup> *Id.*

<sup>[8]</sup> Exs. 6-8.

<sup>[9]</sup> *Id.*

<sup>[10]</sup> Testimony of K. Hunter.

<sup>[11]</sup> *Id.*, Exs. 6-8.

<sup>[12]</sup> *Id.*

<sup>[13]</sup> *Id.*

<sup>[14]</sup> Exs. 2 and 3.

<sup>[15]</sup> Ex. 3.

<sup>[16]</sup> Ex. 3.

<sup>[17]</sup> Ex. 4.

<sup>[18]</sup> Testimony of K. Hunter.

<sup>[19]</sup> *Id.*

<sup>[20]</sup> Ex. 5.

<sup>[21]</sup> *Id.* The Department's records show the address for the licensed entity, "Hunter Construction, Inc." as 6015 Asher Ct, not 6020 Asher Ct. See Finding No. 4.

<sup>[22]</sup> Ex. 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.

<sup>[23]</sup> Testimony of G. Lecuyer.

<sup>[24]</sup> Testimony of K. Hunter.

<sup>[25]</sup> See Finding No. 8.

<sup>[26]</sup> Minn. R. 1400.7300, subp. 5.

<sup>[27]</sup> Minn. Stat. § 326.842; Testimony of G. Lecuyer.