

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Robert James Duffy

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for a Prehearing Conference before Administrative Law Judge Steve M. Mihalchick (substituting for the undersigned Administrative Law Judge) at 3:30 p.m. on October 26, 2006, at the Office of Administrative Hearings in Minneapolis. Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on the behalf of the Minnesota Department of Labor and Industry ("Department"). There was no appearance by or on behalf of the Respondent, Robert James Duffy. The hearing record closed on October 26, 2006.

STATEMENT OF ISSUE

Whether disciplinary action should be taken against Respondent Robert James Duffy for violation of Minn. Stat. §§ 326.84, subd. 1 and subd. 2 and 326.842 by engaging in unlicensed residential building contractor activities, and Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1(D) by engaging in fraudulent, deceptive or dishonest practices, and for violation of Minn. Stat. § 326.91, subd. 1(4) by performing in breach of contract and for violating a Cease and Desist Order of the Department in violation of Minn. Stat. § 326.91, subd. 1(5), and for violation of Minn. Stat. § 326.91, subd. 1(13) by obtaining a building permit fraudulently?

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

FINDINGS OF FACT

1. On September 15, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges was mailed to the Respondent at his last known address – 1932 Cedar Drive, New Brighton, MN 55112. The Notice scheduled a Prehearing Conference for October 26, 2006.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges contains the following language, on page 4:

3. 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. The Respondent did not appear at the October 26, 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 Licensee.

5. 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 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 proved. The Administrative Law Judge therefore takes those allegations and issues as true, and they are deemed proved.

5. Based on the facts set out in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges, the Respondent has violated Minn. Stat. §§ 326.84, subds. 1 and 1b and 326.842, Minn. Stat. § 326.91, subd. 1(2), Minn. R. 2891.0040, subp. 1(D), and Minn. Stat. § 326.91, subds. 1(4), 1(5) and 1(13). As a result, he is subject to discipline by the Minnesota Department of Labor and Industry.

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 Robert James Duffy.

Dated this 22nd day of November, 2006.

_____/s/ Richard C. Luis_____
RICHARD C. LUIS
Administrative Law Judge

Reported: Default

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

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.

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 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.

¹ Unless otherwise noted, the 2004 Minnesota Statutes and the 2005 Minnesota rules apply.