

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

In the Matter of the Residential
Building Contractor's License of
JMH Exteriors

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above matter came on for a prehearing conference before Administrative Law Judge (ALJ) Richard C. Luis on January 3, 2007 at the Office of Administrative Hearings in Minneapolis. Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by or on behalf of JMH Exteriors, Inc. (Licensee, Respondent). The hearing record closed at the end of the prehearing conference on January 3, 2007.

STATEMENT OF ISSUE

Whether disciplinary action should be taken against the Residential Building Contractor's License of the Respondent for submitting a check with insufficient funds for license renewal and for failing to respond to the Department's letters, in violation of Minn. Stat. §§ 45.027, subds. 1 and 1(a), and 326.91, subd. 1(6), and Minn. R. 2891.0050, subp. 2?

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

FINDINGS OF FACT

1. On November 6, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges were mailed to the Respondent at its last known address, in care of Johannes Irwin, its qualifying person – Johannes Irwin, JMH Exteriors, Inc., 27515 101st Street, Zimmerman, MN 55398. The Notice scheduled a Prehearing Conference for January 3, 2007.

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

1. 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.

3. The Respondent did not appear at the January 3, 2007, Prehearing Conference. It 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.

4. The allegations set forth in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges are deemed proved and incorporated into these Findings by reference.

Based on these 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, 45.027 and 326.91.

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, Order to Show Cause 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, Order to Show Cause and Statement of Charges, the Respondent has violated Minn. Stat. § 45.027, subds. 1 and 1(a) by failing to respond to the Department's letters. The Respondent also has violated Minn. Stat. § 326.91, subd. 1(6), and Minn. R. 2891.0050, subp. 2, demonstrating financial irresponsibility by submitting a check with insufficient

funds for license renewal. As a result, the Respondent 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 upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against the Residential Building Contractor's License of JMH Exteriors, Inc.

Dated this 30th day of January, 2007

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 Recommendation. Under Minn. Stat. § 14.61, 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 Board. Parties should contact Nancy Leppink, Director of Legal Services, MN Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

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, 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.