

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Michael Bruce Randolph,
individually and d/b/a E-Z Building &
Remodeling, LLC

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for hearing on March 19, 2007, at 9:30 a.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401. The OAH record closed at the conclusion of the hearing.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (the Department).

Michael Bruce Randolph (Respondent), d/b/a E-Z Building & Remodeling, LLC, 121 Bluestone Drive, Dundas, MN 55019, appeared for himself without counsel.

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 work in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subds. 1(5) and 4 (2006);
2. Respondent failed to comply with the Commissioner's Cease and Desist order of December 13, 2005, in violation of Minn. Stat. § 326.91, subds. 1(5) and 4;
3. Respondent engaged 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 (2005), by failing to obtain a building permit before starting the construction of a deck in Victoria, Minnesota;

4. Respondent performed negligently or in breach of contract in connection with work performed in Randolph, Minnesota, in violation of Minn. Stat. § 326.91, subds. 1(4) and 4;

5. Respondent failed to reduce a building contract to writing, in violation of Minn. Stat. § 326.91, subds. 1(5) and 4 (2006), and Minn. R. 2891.0030 (2005);

6. Respondent misrepresented his unlicensed work in response to the Department's investigation, thereby demonstrating incompetence or untrustworthiness in violation of Minn. Stat. § 326.91, subds. 1(6) and 4 (2006).

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

FINDINGS OF FACT

1. Michael Randolph was the qualifying person and owner of R-9 Carpentry & Concrete, LLC, a licensed residential building contractor.

2. In 2004, the Commissioner issued a Notice and Order for Hearing after receipt of information concerning R-9 Carpentry & Concrete's issuance of insufficient funds checks to several suppliers; failure to maintain liability and worker's compensation insurance; failure to complete projects; certain fraudulent, dishonest, and deceptive practices; and failure to satisfy several judgments by suppliers in Washington County. The Notice and Order for Hearing scheduled a prehearing conference to be held on November 8, 2004. The Respondent failed to appear at the prehearing conference. On January 10, 2005, the Commissioner issued Findings of Fact, Conclusions of Law, and an Order revoking the residential building contractor license and imposing a civil penalty of \$15,000.^[1] The Respondent received the revocation order.^[2] The civil penalty remains unpaid.^[3]

3. In March 2005, the Respondent organized a company called E-Z Building & Remodeling, LLC. In June 2005, E-Z Building & Remodeling contracted with a homeowner in Bloomington, Minnesota, to remodel her basement. The contract called for carpentry, electrical, plumbing, mechanical, and drywall work. The homeowner complained to the Department that Respondent failed to complete the project and performed work of poor quality. Based on these allegations, on December 13, 2005, the Commissioner issued a Cease and Desist Order to Michael Bruce Randolph, individually and doing business as E-Z Building & Remodeling, LLC. The Cease and Desist order notified Respondent that he had the right to request a hearing, and if he failed to do so, the Order would become permanent after 30 days and would remain in effect until modified or vacated by the Commissioner.^[4] Although the Respondent had numerous telephone and e-mail exchanges with the manager of

the Enforcement Services Unit during this timeframe, he did not request a hearing to contest the Cease and Desist Order.^[5]

4. On August 10, 2006, the Respondent contracted with Cory Andrews and Chris Andrews to build a deck on a home they owned in Victoria, Minnesota. Completion of the deck required concrete footings and carpentry work; the homeowners supplied all materials.^[6] A neighbor noticed the work in progress and called the City of Victoria to make inquiries about it, and the city inspector determined that no building permit had been applied for or issued for construction of the deck. The inspector obtained the Respondent's name and telephone number from the homeowner and left a message inquiring about the project. On August 18, 2006, the homeowners applied for a building permit for the deck.^[7] The City reviewed and approved the plans and issued the permit. A few days later the inspector stopped by the premises to clarify a building code issue and spoke with the Respondent. The Respondent maintained that he was working as a sub-contractor for the homeowner and did not require a license. On August 23, 2006, the inspector filed a complaint about the Respondent's unlicensed work with the Department.^[8]

5. John Gauthier, a homeowner in Randolph, Minnesota, contacted the Respondent about completing some renovation work on his home. On August 25, 2006, the Respondent agreed to perform the work, which involved completion of drywall, preparation of main floor ceilings and walls for paint, installation of cabinets, and finish carpentry. The agreement was not reduced to writing, although the homeowner requested a written contract.^[9] After one month, the homeowner became frustrated at the lack of progress and fired the Respondent. On October 17, 2006, the homeowner made a complaint to the Department.^[10]

6. Upon receipt of the complaint that day, the manager of the Enforcement Services Unit sent an e-mail to the Respondent with the subject line of "Hi Mike!" The message was "You're not contracting with homeowners are you?"^[11]

7. Later that same afternoon, the Respondent responded with the following message: "No, I have been working on a new career. The construction business is not for me. Too many dishonest people in this world. Why miss talking to me?"^[12]

8. On November 13, 2006, the Commissioner issued a Notice and Order for Hearing scheduling a prehearing conference to take place on January 8, 2007. The Respondent appeared at the prehearing conference, and the hearing was scheduled for March 6, 2007.^[13]

9. By agreement of the parties, the hearing was later rescheduled to take place on March 19, 2007.^[14] The hearing took place as scheduled.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 326.91, and 326.92, subd. 3.

2. Respondent received due, proper and timely notice of the charges against it and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Contracting work involving more than one skill area requires a residential building contractor's license.^[15] Carpentry, concrete, interior finishing, and drywall work are all special skills.^[16]

5. Respondent engaged in unlicensed building contractor activity by contracting to build a deck requiring two special skills in Victoria, Minnesota, in violation of Minn. Stat. § 326.91, subds. 1(5) and 4.

6. Respondent failed to comply with the Commissioner's Cease and Desist Order of December 13, 2005, in violation of Minn. Stat. § 326.91, subds. 1(5) and 4.

7. Respondent engaged 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 (2005), by failing to obtain a building permit before starting the construction of a deck in Victoria, Minnesota.

8. Respondent performed negligently or in breach of contract in connection with work performed in Randolph, Minnesota, in violation of Minn. Stat. § 326.91, subds. 1(4) and 4.

9. Respondent failed to reduce a building contract to writing, in violation of Minn. Stat. § 326.91, subds. 1(5) and 4 (2006), and Minn. R. 2891.0030 (2005).

10. Respondent misrepresented his unlicensed work in response to the Department's investigation, thereby demonstrating incompetence and untrustworthiness in violation of Minn. Stat. § 326.91, subds. 1(6) and 4 (2006).

11. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against the Respondent, individually and d/b/a E-Z Building & Remodeling, LLC.

Dated: April 18, 2007.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-recorded (one tape).

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 Commissioner. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, 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.

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- [1] Ex. 1.
[2] Testimony of Michael Randolph.
[3] Testimony of Charles Durenberger.
[4] Ex. 2.
[5] Test. of C. Durenberger; Test. of M. Randolph.
[6] Ex. 3.
[7] Ex. 4.
[8] Ex. 5.
[9] Ex. 9.
[10] Ex. 6.
[11] Ex. 7.
[12] Ex. 8.
[13] Prehearing Order (Jan. 8, 2007).
[14] Letter from ALJ to parties (Mar. 2, 2007).
[15] Minn. Stat. §§ 326.83, subds. 15 and 16; and 326.84, subd. 1.
[16] Minn. Stat. § 326.83, subd. 19.