

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

In the Matter of The Application of Jack
of All Construction Trades, Inc., for a
Residential Building Contractor's
License

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger on May 11, 2007, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN, pursuant to a Notice and Order for Hearing issued on February 14, 2007. The testimony of the Department's witness, Tyneice Day, was taken, and the hearing was continued with the agreement of the parties to July 17, 2007, in order to permit the Applicant to seek legal counsel. The Applicant was unable to retain counsel, and the hearing was concluded and the hearing record closed on July 17, 2007.

Appearances:

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

Reginald Carter, Chief Executive Officer, Jack of All Construction Trades, Inc., 4770 107th Street N.W., Blaine, MN 55014 (Applicant).

STATEMENT OF THE ISSUES

1. Has the Applicant demonstrated incompetence, untrustworthiness, financial irresponsibility and a lack of qualification to act as a residential building contractor, in violation of Minn. Stat. §§ 45.027, subd. 7a (4) and 326.91, subd. 1(6)?

2. Did the Applicant fail to apply the proceeds from the Day contract to labor, skill, material and machinery for that contract, in violation of Minn. Stat. § 326.91, subd. 1 (8)?

3. Did the Applicant provide false and incomplete information to the Department on its application, in violation of Minn. Stat. § 326.91, subd. 1 (1) and Minn. R. 2891.0040, subp. 1A?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Applicant was previously licensed as a residential building contractor. That license expired on March 31, 2006.

2. On January 10, 2007, the Applicant submitted an application for a new residential building contractor's license.^[1]

3. On the Application, the Applicant stated that he had not previously held a license in Minnesota or any other state. He stated that he had been the subject of an inquiry or investigation by the Department, and that he had been charged, indicted, pleaded to or convicted of a criminal offense in the past 10 years. He also stated that he had been the defendant in a lawsuit and had been the subject of an outstanding unsatisfied judgment related to residential contracting or other similar activities. One question on the application was left blank, and not all of the requested supporting documentation was provided.^[2]

4. On September 6, 2005, the Applicant entered into an agreement with Nicholas Nix and Tyneice Day for work to be done at 2207 Portland Avenue South in Minneapolis, Minnesota. The initial agreement was that the Applicant would tear down an old house on the property, haul away the debris, dig a new basement, and grade the property. The Applicant was responsible for assuring that the power and other utilities were cut off.^[3] Ms. Day, through her lender, paid the Applicant \$10,000 as a down payment of the \$20,000 agreed upon for this phase of the project.^[4]

5. At the same time, Ms. Day and the Applicant entered into a second agreement. The Applicant agreed to set and pour footings for a block foundation, pour the basement floor, garage floor, driveway, steps and walk, and to install a sump pump for water control before pouring the concrete for the basement. The agreement was that Ms. Day would pay 50% down for that work as well, but no payment was made at that time.

6. There was some initial confusion about whether the utilities were to be cut off at the house or at the street. The Applicant had conversations with the City of Minneapolis and requested appropriate permits. In the course of the conversations, the Applicant was told that there was an outstanding water bill for \$824.05 that had to be paid before the City would grant the permit to disconnect the utilities. Ms. Day told the Applicant that she would repay him if the Applicant paid the water bill from his \$10,000 draw.^[5] Applicant paid the water bill.^[6]

7. Because the City required that the water be disconnected at the street, the Applicant contracted with Mr. Rooter to disconnect the water, the

necessary permits were issued, and the utilities were disconnected by October 25, 2005.^[7]

8. The Applicant paid Mr. Rooter \$2000 at the start of the job and owed Mr. Rooter \$4000 more at completion.^[8] The Applicant had written a post-dated check to Mr. Rooter for \$4000, believing that he had completed the work covered by the initial agreement, that Ms. Day would pay him the remaining \$10,000, and that he would have sufficient funds to cover the balance owing to Mr. Rooter.^[9] However, there were insufficient funds to cover the check. Mr. Rooter filed a Mechanic's lien on November 28, 2005, for the balance of \$4000.^[10] The Applicant satisfied the lien on September 3, 2007.^[11]

9. In the course of his dealings with the City, the Applicant learned that he would need a demolition license which would require a bond. He obtained the necessary license after discussions and a meeting with the City, and obtained the bond at his own expense.^[12]

10. Ms. Day confirmed that the utilities were turned off, the house was torn down, the debris was hauled away. However, the grading was not completed.^[13]

11. Under the terms of their second agreement, the Applicant planned to construct a cement block foundation.^[14] However, the City would not agree, and required that the walls be made of poured concrete. The Applicant conferred with Ms. Day and told her that it would be more expensive to construct the foundation with poured concrete. She agreed to the change.^[15] However, the parties disagree about whether there was an agreed-upon change to the scope of the work to be performed. Ms. Day testified that there was no agreement to change the contract or to pay more. The Applicant testified that Ms. Day told him to go ahead with the poured concrete foundation and basement floor and to omit the concrete slab for the garage, the porch, and other small concrete work. He believed that he had a deal with Ms. Day to pour the footings and basement floor and to waterproof the foundation.^[16]

12. Ms. Day paid the Applicant \$19,000 on January 5, 2006.^[17] This was intended to pay off the balance for the demolition, and cover half of the work on the foundation and associated concrete work.^[18]

13. In late January, the Applicant poured the foundation. He wrote a post-dated check to Cemstone, relying upon payment from a job in Brooklyn Park. He received payment by check for that project and he deposited the check. However, the woman who made the payment and Mr. Carter disputed whether her payment was final; the dispute was not resolved, and the woman stopped payment on her check. As a result, there were insufficient funds to cover the check to Cemstone, and Cemstone placed a lien on the property.^[19] Eventually Ms. Day agreed to pay Cemstone out of the balance that was owing

to the Applicant. The Applicant's dispute with the Brooklyn Park customer was not resolved, and the Applicant placed a lien on that property.^[20]

14. Applicant also began the waterproofing. Despite many attempts, the Applicant was unable to get the waterproofing to properly adhere to the foundation.^[21]

15. The relationship deteriorated between the parties and there was no additional discussion between them about the project after January of 2006. The Applicant claimed that he made several attempts to reach Ms. Day but that she would not return his telephone calls. In February, the Applicant removed his tools from the work site.^[22]

16. Although Ms. Day's contract with the Applicant required him to do the waterproofing, Ms. Day hired Complete Basement Systems in February and paid that company \$4600 to do the waterproofing.^[23]

17. In March 2006, the Applicant contacted Ms. Day to be reimbursed for his payment of the water bill, but she would not agree to reimburse him.^[24] However, her partner, Mr. Nix, reimbursed \$500 to the Applicant.^[25]

18. In 2004, the Applicant was convicted of theft by check in Anoka County, and was placed on probation from February 15, 2005 through May 15, 2005. The Applicant contends that he had been hired as a subcontractor and was asked to make purchases at Menards. He provided the materials and did the work that he was retained to do. He was not paid, but did pay the amount owing to Menards. In 2006, the Applicant was charged with theft and fifth degree assault in Scott County, but those charges were dropped prior to trial.^[26]

19. As a result of the Applicant's financial difficulties and the criminal conviction, the Applicant has had a difficult time working and paying his bills. He is very concerned that he will be unable to support his family if the Department denies him a license.

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 are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2006).

2. The Respondent received due, proper and timely notice of the charges against him. The Department has complied with all relevant procedural legal requirements. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has shown by a preponderance of the evidence that the Applicant demonstrated incompetence, untrustworthiness, financial irresponsibility and a lack of qualification to act as a residential building contractor, in violation of Minn. Stat. §§ 45.027, subd. 7a (4) and 326.91, subd. 1(6).

4. The Department did not show by a preponderance of the evidence that the Applicant failed to apply the proceeds from the Day contract to labor, skill, material and machinery for that contract, in violation of Minn. Stat. § 326.91, subd. 1 (8).

5. The Department has shown by a preponderance of the evidence that the Applicant provided false and incomplete information to the Department on its application, in violation of Minn. Stat. § 326.91, subd. 1 (1) and Minn. R. 2891.0040, subp. 1A.

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

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

That the Commissioner of Labor and Industry deny the license application.

Dated: August 14, 2007

/s/ Beverly Jones Heydinger

Beverly Jones Heydinger
Administrative Law Judge

Reported: Taped, three tapes
No transcript prepared

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 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 Steve Sviggum, Commissioner, ATTN: Nancy Leppink, Director 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. 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.

MEMORANDUM

The Department has demonstrated by a preponderance of the evidence that the Applicant has, on several occasions, bounced checks. Although the Applicant offered plausible explanations for some instances, the number of checks for which there were insufficient funds demonstrates that the Applicant cannot be relied upon for payment. As a result of his poor account management, the businesses that received his checks were compelled to incur additional collection expense. Thus, it is reasonable to conclude that the Applicant has been financially irresponsible and untrustworthy, and, as to financial matters, incompetent and lacking the qualification to act as a residential building contractor, in violation of Minn. Stat. §§ 45.027, subd. 7a (4) and 326.91, subd. 1 (6). This should not be taken as a conclusion concerning the quality of the work actually performed. The Department did not attempt to show that the Applicant's technical knowledge and skill were poor.

There was insufficient and confusing evidence about whether the Applicant failed to apply the proceeds from the contract with Ms. Day to the supplies and expenses related to those contracts.^[27] The Department failed to show by a preponderance of the evidence that the proceeds were not applied to the expenses of the project. There certainly were unexpected expenses and expenses that exceeded the amount of the contracts. The Applicant and Ms. Day were compelled to expend additional funds to complete the work covered by them. Although this may be further evidence of financial irresponsibility, it was insufficient evidence to show that the proceeds were diverted. Also, the Applicant's lack of experience caused him difficulty. The costs to obtain a bond and demolition license were not included in his cost estimate and were not costs for the labor and materials to perform the contract. Instead, they were costs of doing business that should have been built into his overhead.

It is unclear why the Applicant failed to disclose on his application that he had previously held a license or why he failed to answer one of the questions on the form or provide the requested supporting documentation. In response to other questions, he gave other answers that were not favorable to him. The Applicant offered no explanation for the error or the omissions.

The Applicant admitted that he had made blunders in the past and had learned many lessons, but asserted that he conscientiously attempted to learn about the necessary permits and forms required, and to comply with the law. He acknowledged that he had failed to get written changes to the agreements with his customers, and that he may have underestimated his expenses for the projects that he undertook. In his defense, he offered uncontroverted evidence that he made several trips to the City of Minneapolis to assure that all necessary permits were obtained, and that he fronted payment for a utility bill in order to move ahead the work for Ms. Day. He also claimed that he gave low bids for the early stages of the project with the expectation that Ms. Day would also contract with him to build the new house. He expected to make some profit on the new

construction portion of the project. Although the Applicant's problems may stem from a lack of business acumen rather than intentional wrongdoing, several businesses were not paid in a timely way for the materials and services provided and were required to incur additional collection expense. Because this happened on more than one occasion, it does not appear that the Applicant has the skill to competently operate as a residential contractor.

It is unfortunate that the Applicant's past is impeding his ability to find work. It is apparent that he has learned a great deal, that he wants to continue to work, and that he could likely do so successfully with proper supervision or support. Nonetheless, the Department has demonstrated by a preponderance of the evidence that the Applicant should not be granted a license to operate independently as a residential building contractor.

B. J. H.

-
- [\[1\]](#) Ex. 1.
 - [\[2\]](#) Ex. 1.
 - [\[3\]](#) Ex. 2; Test. of R. Carter.
 - [\[4\]](#) Ex. 2; Ex. 6 at 2.
 - [\[5\]](#) Test. of T. Day; Test. of R. Carter.
 - [\[6\]](#) Ex. 18; Test. of R. Carter.
 - [\[7\]](#) Exs. 21-25; Test. of R. Carter.
 - [\[8\]](#) Exs. 19 and 26.
 - [\[9\]](#) Test. of R. Carter; Ex. 30.
 - [\[10\]](#) Ex. 12.
 - [\[11\]](#) Ex. 3.
 - [\[12\]](#) Test. of R. Carter; Exs. 27-29.
 - [\[13\]](#) Test. of T. Day.
 - [\[14\]](#) Ex. 2, second page.
 - [\[15\]](#) Test. of T. Day.
 - [\[16\]](#) Test. of R. Carter.
 - [\[17\]](#) Ex. 6, first page.
 - [\[18\]](#) Test. of T. Day.
 - [\[19\]](#) Test. R. Carter; Exs. 13, 14, 15.
 - [\[20\]](#) Test. of R. Carter.
 - [\[21\]](#) Test. of T. Day and R. Carter.
 - [\[22\]](#) Test. of R. Carter.
 - [\[23\]](#) Ex. 7.
 - [\[24\]](#) Test. of T. Day.
 - [\[25\]](#) Test. of T. Day and R. Carter.
 - [\[26\]](#) Exs. 16, 17; Test. of R. Carter.
 - [\[27\]](#) See e.g. Ex. 32.