

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Rory Scott Schiltz, d/b/a
R. Scott Construction

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for a prehearing conference on April 10, 2007, at 2:30 p.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).

Rory Scott Schiltz, d/b/a R. Scott Construction (Respondent), has two addresses known to the Commissioner: 11415 Edgewood Avenue North, Champlin, MN 55316, and 20110 Goldeneye Way, Rogers, MN 55374. Respondent did not appear in person or by counsel at the prehearing conference.

STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent is subject to discipline and/or civil penalties because:

1. Respondent performed negligently or in breach of contract on two remodeling projects, in violation of Minn. Stat. § 326.91, subd. 1(4) (2006);
2. Respondent engaged in acts that demonstrate incompetence, untrustworthiness, and financial irresponsibility, in violation of Minn. Stat. § 326.91, subd. 1(6);
3. Respondent engaged in fraudulent, deceptive, or dishonest practices, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H (2005); and

4. Respondent failed to respond to the Department's request for information about these matters, in violation of Minn. Stat. § 45.027, subds. 1a and 7(a)(3).

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

FINDINGS OF FACT

1. On March 9, 2007, the Department sent by first class mail a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges in this matter to Rory Scott Shiltz, d/b/a R. Scott Construction, at 11415 Edgewood Avenue North, Champlin, MN 55316, and at 20110 Goldeneye Way, Rogers, MN 55374. The Notice and Order for Hearing scheduled a prehearing conference in this matter at 2:30 p.m. on April 10, 2007, at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401.

2. On March 22, 2007, the Department sent by first class mail a copy of the Notice of Amendment, Order for Prehearing Conference, Order to Show Cause, Order for Hearing, and Amended Statement of Charges (Amended Notice and Order for Hearing) in this matter the Respondent at the same addresses noted above.

3. The Amended Notice and Order for Hearing also scheduled a prehearing conference in this matter at 2:30 p.m. on April 10, 2007, at the Office of Administrative Hearings.

4. The Amended Notice and Order for Hearing specifically notified the Respondent that failure to appear at the prehearing conference or hearing 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 the Respondent may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.^[1]

5. The Respondent did not appear for the prehearing conference, nor did Respondent contact the Administrative Law Judge prior to the hearing to seek a continuance or request any other relief.

6. Because Respondent failed to appear for the prehearing conference, he is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Amended Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

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. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of his failure to appear at the hearing.

6. The Respondent performed negligently or in breach of contract on the Ahlers and Gaffer projects by failing to complete work for which he was paid, in violation of Minn. Stat. § 326.91, subd. 1(4).

7. The Respondent demonstrated incompetence, financial irresponsibility, and untrustworthiness, in violation of Minn. Stat. § 326.91, subd. 1(6), by failing to refund overpayments, breaching a settlement agreement, and failing to satisfy a judgment against him.

8. The Respondent engaged in fraudulent, deceptive, or dishonest practices, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1H, by failing to obtain the applicable inspections for work performed on a roofing project.

9. The Respondent failed to respond to the Department's requests for information about these matters, in violation of Minn. Stat. § 45.027, subs. 1a and 7(a)(3).

10. 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.

Dated: April 26, 2007.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
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 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.

^[1] Amended Notice and Order for Hearing at 5.