

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Brashdan, LLC

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for a prehearing conference at 1:30 p.m. on November 21, 2007, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The OAH record closed at the conclusion of the prehearing conference.

Michael J. Tostengard, 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).

Brashdan, LLC (Respondent), 10250 Foley Boulevard NW, PO Box 48220, Coon Rapids, MN 55448, did not appear.

STATEMENT OF ISSUES

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

(1) The Respondent failed to use the proceeds received from a customer to pay for roofing materials, in violation of Minn. Stat. § 326.91, subd. 1(7) (2006);

(2) The Respondent engaged in unlicensed residential building contractor activity, in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b and 326.842 (2006);

(3) The Respondent failed to comply with the terms of a Consent Order, in violation of Minn. Stat. § 326.91, subd. 1(5) (2006); and

(4) The Respondent prepared a forged lien waiver, in violation of Minn. Stat. § 326.91, subd. 1(13) (2006).

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

FINDINGS OF FACT

1. On October 3, 2007, the Commissioner sent by first class mail a copy of the Notice and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice and Order for Hearing) to the Respondent and its owners, Gregory Steiner and Jeffrey Steiner, at 10250 Foley Boulevard NW, PO Box 48220, Coon Rapids, Minnesota 55448.¹

2. The Notice and Order for Hearing scheduled a prehearing conference in this matter at 1:30 p.m. on November 21, 2007, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

3. The Notice and Order for Hearing specifically notified the Respondent that 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 the proposed disciplinary action may be upheld.²

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

5. Because Respondent failed to appear for the prehearing conference, it is in default.

6. Pursuant to Minn. R. 1400.6000 (2005), the allegations contained in the 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 prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

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

¹ Affidavit of Service by U.S. Mail (Oct. 3, 2007).

² Notice and Order for Hearing at 4.

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 its failure to appear at the prehearing conference.

6. The Commissioner may take adverse action against a license if a licensee or agent owner has failed to use the proceeds of any payment made to the licensee for the payment of material contributed to the construction or improvement of residential real estate, knowing that the cost of material furnished for the improvement remains unpaid.³

7. The Respondent contracted with JMS Custom Homes, LLC, to re-roof certain homes. Despite being paid in full by JMS Custom Homes, the Respondent failed to use the proceeds received to pay a supplier for the materials used in the contract. The Respondent failed to use the proceeds received from a customer to pay for roofing materials, in violation of Minn. Stat. § 326.91, subd. 1(7) (2006).

8. Residential building contractors must be licensed by the Commissioner.⁴ Residential roofers are subject to this requirement.⁵

9. A December 15, 2006, Consent Order suspended the Respondent's license and precluded the Respondent from entering into any residential building contracts until certain financial obligations were satisfied, a civil penalty was paid, and the suspension was rescinded. The Respondent continued to offer to perform residential building contractor services while his license remained suspended, in violation of Minn. Stat. § 326.84, subs. 1 and 1b and 326.842 (2006).

10. The Commissioner may take adverse action against a license if a licensee or agent owner has violated or has failed to comply with any rule or order under sections 326.83 to 326.98, or any other law, rule, or order related to the duties and responsibilities entrusted to the Commissioner.⁶

11. The Respondent failed to comply with the terms of the December 15, 2006, Consent Order, in violation of Minn. Stat. § 326.91, subd. 1(5) (2006).

³ Minn. Stat. § 326.91, subd. 1(7) (2006). The Notice and Order for Hearing contains a typographical error citing this provision as § 326.91, subd. 1(8).

⁴ Minn. Stat. § 326.84, subs. 1 and 1b (2006).

⁵ Minn. Stat. § 326.842 (2006).

⁶ Minn. Stat. § 326.91, subd. 1(5) (2006).

12. The Commissioner may take adverse action against a license if a licensee or agent owner has made use of a forged mechanic's lien waiver.⁷

13. The Respondent prepared false lien waivers indicating that a supplier of roofing materials had been paid in full, in violation of Minn. Stat. § 326.91, subd. 1(13) (2006).

14. 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: November 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 Commissioner. Parties should contact Steve Sviggum, 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

⁷ Minn. Stat. § 326.91, subd. 1(13) (2006). The Notice and Order for Hearing contains a typographical error citing this provision as § 326.91, subd. 1(14).

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.