

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of David John Lood,
doing business as Frontier Builders

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Raymond R. Krause (“ALJ”) on February 14, 2008, for a prehearing conference at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 5510101. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Order for Prehearing Conference, dated December 20, 2007.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (“Department”). The Respondent, David Lood, did not appear in person or by counsel. The record closed upon the Respondent’s default on February 14, 2008.

The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges were sent to the Respondent at his home address and the business address on file with the Department and found on the certificate of service for this report. They were not returned as undelivered.

STATEMENT OF ISSUE

1. Did Respondent engage in unlicensed residential building contractor activity in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b and 326.842 (2006)?
2. Did the Respondent perform in breach of contract in violation of Minn. Stat. § 326.91 subd. 1(4)?
3. Did the Respondent violate the July 10, 2007, Cease and Desist Order in violation of Minn. Stat. 326.91, subd. 1(5)?
4. Did the Respondent demonstrate financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6)?
5. Did the Respondent fail to respond to requests for information from the Department in violation of Minn. Stat. § 45.027, subd. 1a?

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

FINDINGS OF FACT

1. On December 20, 2007, the Notice of and Order for Hearing, Order for Prehearing Conference Statement of Charges, and Notice of Appearance was sent by first class mail to David Lood and to David Lood, d/b/a/ Frontier Builders at the addresses on file with the Department and found on the certificate of service for this report. Neither was returned to the Department.

2. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed disciplinary action may be upheld.

4. Because Respondent failed to appear, he is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference 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 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 (2004).

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 substantive and 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 of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the ALJ's prior consent, to appear at the prehearing conference.

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

7. Respondent demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6).

8. Respondent performed in breach of contract in violation of Minn. Stat. § 326.91 subd. 1(4).

8. Respondent violated the July 10, 2007, Cease and Desist Order, in violation of Minn. Stat. 326.91, subd. 1(5).

9. Respondent has failed to respond to requests for information in violation of Minn. Stat. § 45.027, subd. 1a.

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 of the Department of Labor and Industry impose discipline including a civil penalty upon the Respondent.

Dated: February 22, 2008

s/Raymond R. Krause

RAYMOND R. KRAUSE

Chief 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

Recommendations. 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 the Department to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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.