

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of the Residential Building
Contractor's License of Charles Owen
Heidemann III, doing business as Chuck
Heidemann Construction, License No.
20014336

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Barbara L. Neilson for a prehearing conference on Wednesday, July 23, 2009, at 1:30 p.m. at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. The prehearing conference was held pursuant to a Notice and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, dated May 29, 2008.

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"). The Respondent, Charles Owen Heidemann III, did not appear in person or by counsel. The OAH record closed on July 23, 2008.

STATEMENT OF ISSUES

This matter involves the following issues:

- (1) Was a judgment for \$114,600 obtained against the Respondent in November 2007 in connection with a lawsuit alleging negligence and breach of contract by Respondent in the construction of a Duluth home?
- (2) Has the Respondent failed to satisfy that judgment?
- (3) If so, is the Respondent subject to discipline because he has demonstrated financial irresponsibility and/or has performed in breach of contract?

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

FINDINGS OF FACT

1. On May 30, 2008, a copy of the Notice and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges in this matter was sent via first class mail to Charles Owen Heidemann III at his most recent address on file with the Department of Labor and Industry.¹ The U.S. Postal Service did not return that Notice to the Department as undelivered or undeliverable.

2. The Notice and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges scheduled a prehearing conference in this matter for July 23, 2008, at 1:30 p.m. at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.²

3. On June 23, 2008, an individual who identified himself as the Respondent called the Office of Administrative Hearings and informed the Office that he would not contest this matter and he understood that he would lose his license as a result.

4. The Respondent did not appear at the prehearing conference scheduled for July 23, 2008, did not obtain the Administrative Law Judge'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.

5. The Notice and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges contained the following warning:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.³

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

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

¹ Affidavit of Service by First Class Mail of Jean-Anne Gates dated May 30, 2008.

² Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges at 1.

³ *Id.* at 3.

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 and 326.91.

2. Respondent received due, proper and timely notice of the charges against him 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.

4. The Respondent is in default herein as a result of his failure to appear at the prehearing conference. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations and the issues set out in that Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. A homeowner obtained a judgment against the Respondent in the amount of \$114,600 in November 2007 in a suit alleging negligence and breach of contract in the construction of a Duluth home. The Respondent has not satisfied that judgment. As a result, the Respondent engaged in an act or practice that demonstrates that he is financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(15), and performed in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4).⁴

6. Minn. Stat. § 326.91 empowers the Commissioner to take disciplinary action against the Respondent, as a result of the Respondent's violations of that statute.

7. The imposition of disciplinary action against the Respondent is in the public interest.

⁴ The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges asserted that the Respondent had demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6), and had performed in breach of contract in violation of Minn. Stat. § 326B.84, subd. 1(4). The correct citations for the statutes relating to these violations are Minn. Stat. § 326.91, subd. 1(15) and (4).

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take such disciplinary action against the Respondent as he considers appropriate under the circumstances.

Dated: August 19, 2008.

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default (no digital recording)

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.