

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Michael Wayne Stierns	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
--	---

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on April 29, 2010. The OAH record closed at the conclusion of the hearing that day.

Michael J. Tostengard, Assistant Attorney General, appeared for the Department of Labor and Industry (Department). Michael W. Stierns (Respondent) did not appear in person or through counsel.

STATEMENT OF THE ISSUES

Is the Respondent subject to discipline because he held himself out as a residential building contractor, residential remodeler, or residential roofer without having a license issued by the Commissioner, in violation of Minn. Stat. § 326B.805, subds. 1 and 3 (2008)?¹

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

FINDINGS OF FACT

1. Michael W. Stierns, individually and doing business as Michael Stierns Construction, was a licensed residential building contractor in 1998 and 1999. The Commissioner sought to take disciplinary action against the license based on allegations that he had taken down-payments for three projects and failed to perform the contracted work or return the payments. By a Consent Order dated April 21, 2000, his license was revoked.² The Respondent is not currently licensed.³

¹ All references to Minnesota Statutes are to the 2008 edition.

² Ex. 1.

³ Testimony of Greg LeCuyer.

2. On November 25, 2009, a licensed building contractor forwarded to the Department a flyer the contractor had found in his mailbox. The flyer advertised the services of Mike Stierns, 2894 Long Lake Drive NW, Isanti, Minnesota. It stated that he had 20 years of experience in all phases of construction and that he was fully insured. The advertisement solicited work for Mr. Stierns in the form of sheetrocking, framing, painting, roofing, basement finishing, finish carpentry, tile work, siding, and “[a]ny type of remodeling or new construction.”⁴

3. On December 3, 2009, the Commissioner issued an Administrative Order to the Respondent requiring him to cease and desist from acting as or holding himself out as a residential building contractor, remodeler, or roofer in the state of Minnesota. The Commissioner’s Order also assessed a monetary penalty of \$2,000 against the Respondent.

4. The Respondent requested a hearing to contest the Order.

5. On January 12, 2010, the Commissioner issued a Notice and Order for Hearing, scheduling a prehearing conference to take place on February 25, 2010.

6. The Respondent appeared at the prehearing conference, and the hearing was scheduled to take place on April 29, 2010.⁵

7. The Respondent failed to appear for the hearing on April 29, 2010, and he did not contact the Administrative Law Judge to reschedule the hearing or make other arrangements.

Based on these 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 the Respondent under Minn. Stat. §§ 14.50 and 326B.84.

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

⁵ First Prehearing Order (Feb. 26, 2010).

4. In order to prevail, the Department must prove by a preponderance of the evidence that the alleged violations occurred.

5. "Residential building contractor" means a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills.⁶

6. "Residential remodeler" means a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills.⁷

7. "Special skills" are defined to mean, among other things, carpentry (including finish carpentry and drywall installation), interior finishing (including painting and tile installation), exterior finishing (including siding), and residential roofing.⁸

8. "Residential roofer" is defined to mean a person in the business of contracting, or offering to contract with an owner, to complete work on residential real estate in roof coverings, roof sheathing, roof weatherproofing and insulation, and repair of roof systems, but not construction of new roof systems.⁹

9. A person who meets the definition of a residential building contractor, residential remodeler, or residential roofer must be licensed by the Commissioner. No persons who are required to be licensed may act or hold themselves out as a residential building contractor, residential remodeler, or residential roofer for compensation without a license.¹⁰

10. In the flyer distributed in November 2009, the Respondent held himself out as a residential building contractor, residential remodeler, or residential roofer without having a license to perform this work.

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

⁶ Minn. Stat. § 326B.802, subd. 11.

⁷ Minn. Stat. § 326B.802, subd. 12.

⁸ Minn. Stat. § 326B.802, subd. 15(c)-(g).

⁹ Minn. Stat. § 326B.802, subd. 14.

¹⁰ Minn. Stat. § 326B.805, subds. 1 and 3.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner AFFIRM the Administrative Order issued to Michael W. Stierns on December 3, 2009.

Dated: May 4, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally Recorded

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 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 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 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.