

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE Department of Labor and Industry

In the Matter of the Residential Building Contractor License Application of Advantage Restoration, Inc. and Gregory Covell and Mathew Peot, individually	<b>FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION</b>
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This matter came on for a prehearing before Administrative Law Judge Steve M. Mihalchick at 2:30 p.m. on September 13, 2010, at the Office of Administrative Hearings in St. Paul, pursuant to a Notice and Order for Prehearing Conference served by mail upon Respondents on August 5, 2010.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry (the Department). There was no appearance by or on behalf of Respondents Advantage Restoration, Inc., Gregory Covell, or Mathew Peot. Respondents did not request a continuance or contact the ALJ for other relief. The Department requested a default recommendation.

### STATEMENT OF ISSUES

1. Did Respondents, or any of them, provide incomplete, false, and misleading information on a license application in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(2) and 326.84(1)(2008) and Minn. R. 2891, subp. 1A(2009)?
2. Did Respondent Gregory Covell demonstrate himself to be untrustworthy or otherwise incompetent or unqualified to act under a license issued by the Commissioner in violation of Minn. Stat. § 326.84(15)(2008)?
3. Did Respondent Advantage Restoration, Inc., engage in unlicensed building contractor, remodeler, or roofer activities in violation of Minn. Stat. §§ 236B.805, subs. 1 and 3, and 326B.84(5)(2008)?

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

### FINDINGS OF FACT

1. On or about January 4, 2010, Gregory Covell submitted a residential a building contractor license application to the Department for Advantage Restoration, Inc.

(Advantage Restoration). Mr. Covell was the proposed qualifying person for Advantage Restoration.

2. Because of certain incomplete responses on the application form, the Department sought further information from Mr. Covell primarily regarding his prior damage restoration experience and license status and association with licensed entities.

3. During the Department's investigation, Mathew Peot, a principal of Advantage Restoration, called the Department to check on the status of the application. He was asked for and provided some information regarding Mr. Covell's employment.

4. On July 7, 2010, the Department issued a Licensing Order that denied the license application of Advantage Restoration and ordered Advantage Restoration and its principals Mr. Covell and Mr. Peot to cease and desist from acting as or holding themselves out to the public as a building contractor, remodeler, or roofer in the State of Minnesota. The Licensing Order was mailed to Mr. Covell at Advantage Restoration, 6240 Flying Cloud Drive #206, Eden Prairie, MN 55344 and to Mr. Peot at 1004 South Chestnut Street, Belle Plaine, MN 56001.

5. The Licensing Order concluded that Advantage Restoration committed violations of law justifying denial of the application; provided incomplete, false, and misleading information on a license application; and engaged in unlicensed building contractor, remodeler, or roofer activities by offering services that require a state license.

6. The Licensing Order concluded that Mr. Covell demonstrated himself to be untrustworthy or otherwise incompetent or unqualified to act under a license issued by the Commissioner.

7. The Licensing Order stated no allegation or conclusion that Mr. Peot had committed any violation.

8. On August 3, 2010, Mr. Covell filed a request for hearing "to contest the Licensing Order issued in the matter of the Residential Building Contractor License Application of Advantage Restoration Inc., and myself." Mr. Peot did not file a request for hearing.

9. On August 5, 2010, a Notice of and Order for Prehearing Conference, which attached and incorporated a copy of the Licensing Order was served upon Mr. Covell and Advantage Restoration at the address on file with the Department, 6240 Flying Cloud Drive #206, Eden Prairie, MN 55344. It was not served individually upon Mathew Peot.

10. The Notice of and Order for Prehearing Conference contained the following notice:

Respondent's failure to appear at the hearing or any prehearing conference, or any failure to comply with an order of the Administrative Law Judge, may result in a finding that Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

The Notice of and Order for Prehearing Conference also contained notices that any request for delay of a hearing or prehearing conference must be made to the Administrative Law Judge and that any party intending to participate in this proceeding must file a Notice of Appearance form with the Administrative Law Judge.

11. Advantage Restoration, Mr. Covell, and Mr. Peot all failed to appear at the prehearing conference, 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.

12. Because they failed to appear at the prehearing conference or to contact the Administrative Law Judge prior to the prehearing conference, Advantage Restoration and Mr. Covell are in default. Because Mr. Peot was not served with the Notice of and Order for Prehearing Conference, he had not been ordered to appear and he is not in default.

13. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Prehearing Conference and in the Licensing Order 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 Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 326.92, 45.027, subd. 1, 45.024, and 14.50.

2. Respondents Advantage Restoration, Inc., and Gregory Covell received due, proper, and timely notice of the allegations against them 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. The Licensing Order notified Respondents that unless they requested a hearing within 30 days, the Licensing Order would become a final order of the Commissioner.

5. Respondent Mathew Peot did not request a hearing. Therefore, as to him, the Licensing Order became a final order of the Commissioner.

6. 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.

7. Respondents Advantage Restoration, Inc., and Gregory Covell are in default in this matter as a result of their failure, without the Administrative Law Judge's prior consent, to appear at the prehearing conference.

8. Respondents Advantage Restoration, Inc., and Gregory Covell provided incomplete, false, and misleading information on a license application in violation of Minn. Stat. §§ 326B.082, subd. 11(b)(2) and 326.84(1)(2008) and Minn. R. 2891, subp. 1A(2009).

9. Respondent Gregory Covell demonstrated himself to be untrustworthy or otherwise incompetent or unqualified to act under a license issued by the Commissioner in violation of Minn. Stat. § 326.84(15)(2008).

10. Respondent Advantage Restoration, Inc., engaged in unlicensed building contractor, remodeler, or roofer activities in violation of Minn. Stat. §§ 236B.805, subds. 1 and 3, and 326B.84(5)(2008).

11. Respondents Advantage Restoration, Inc., and Gregory Covell have committed one or more violations of applicable law. Therefore, pursuant to Minn. Stat. § 326B.082, subd. 11, the Commissioner may deny the license application of Advantage Restoration, Inc.,

12. Disciplinary action against Respondents Advantage Restoration, Inc., and Gregory Covell 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 Labor and Industry affirm the Licensing Order, deny the license application of Advantage Restoration, Inc., and take appropriate disciplinary action against Respondents Advantage Restoration, Inc., and Gregory Covell.

Dated: November 12, 2010

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Default; not recorded

### 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 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 Wendy Willson Legge, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, Saint Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, 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.

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.