

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order
Issued to Gabriel D. Smith

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on December 12, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The record closed at the conclusion of the hearing that day.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (Department). Jeremy E. Warring, Warring Law Office, PA, White Bear Professional Building, Suite 204, 4886 Highway 61, White Bear Lake, MN 55110, appeared for Gabriel D. Smith (Respondent).

STATEMENT OF THE ISSUES

1. Did Respondent fail to comply with the Commissioner's order to appear at the Department and give testimony, in violation of Minn. Stat. § 326B.082, subds. 2 and 11(b)(6) (2010)?¹
2. Did the Respondent perform electrical work without the required registration as an unlicensed individual or without licensure as a journeyman or master electrician, in violation of Minn. Stat. § 326B.33, subds. 2(a) and 13?

The Administrative Law Judge finds that the Respondent committed the violations described above and concludes that the Licensing Order should be affirmed.

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

FINDINGS OF FACT

1. The Respondent graduated from Mahtomedi High School in 2002 and thereafter attended classes at Brown College and the Institute of Production Recording. He also performed seasonal construction work. He is the son-in-law of Timothy Barrett, a licensed

¹ All references to Minnesota Statutes are to the 2010 edition.

master electrician and owner of All Main Street Electric (AMSE) in White Bear Lake, Minnesota. In February or March of 2010, the Respondent began working for AMSE. The Respondent was not aware of the requirement that unlicensed individuals who perform electrical work must be registered with the Department.²

2. The Respondent is not now and has never been licensed by the Department as a journeyman electrician, master electrician, or electrical contractor.

3. In May 2010, the Respondent performed electrical work on a residence in Bloomington, Minnesota.³

4. On September 17, 2010, Timothy Barrett appeared with his attorney before Department representatives in connection with an investigation of AMSE's business practices. During the interview, Timothy Barrett stated that Respondent had performed electrical work as an employee of AMSE.⁴ At the conclusion of the meeting, Timothy Barrett asked the Department to provide him with a registration application for the Respondent because he was not registered as an unlicensed individual.⁵

5. On or about September 22, 2010, the Respondent signed an application for registration as an unlicensed electrical worker. He provided a personal address in Dellwood, Minnesota.⁶

6. On October 6, 2010, the Department met with Guyan Stream, a licensed Journeyman Electrician, regarding work performed for AMSE. Stream was not and never had been an employee of AMSE but reported that Timothy Barrett had asked him to provide supervision of electrical work on particular jobs in exchange for repairs made to Stream's vehicles. Stream reported that he had supervised Respondent's work for AMSE on one job in Minneapolis, but he was unsure what kind of work the Respondent had performed.⁷

7. On October 18, 2010, the Commissioner issued to Respondent a Registration (No. 091513-RE) to perform electrical work as an unlicensed individual. The registration allowed Respondent to perform electrical work under the direct supervision of a licensed individual.⁸

8. By letter dated November 15, 2010, the Department ordered Respondent to appear on November 29, 2010, at 1:00 p.m., and to bring with him a complete list of all property addresses where he had performed electrical work since January 1, 2009. The Order to Appear was sent to Respondent at the Dellwood address he had provided on his

² Testimony of Gabriel Smith; Exs. 3, 4, & 10.

³ Ex. 7; Ex. 9 (response to Request for Admission No. 16).

⁴ Testimony of John Schultz; Ex. 2.

⁵ Testimony of Chris Williams.

⁶ Ex. 6.

⁷ Ex. 5; Testimony of Guyan Stream.

⁸ See Minn. Stat. § 326B.33, subds. 12 & 13.

application. Respondent did not appear as ordered. He did not contact the Department before or after this date to attempt to make other arrangements for meeting with the Department.⁹

9. On January 5, 2011, the Department issued a Licensing Order revoking the Respondent's Registration as an Unlicensed Individual, assessing a monetary penalty of \$2,000, and ordering the Respondent to cease and desist from committing further violations and from performing or offering to perform electrical work that requires licensure or registration in Minnesota until appropriate licensure or registration is obtained. The Respondent made a timely request for a hearing.

10. On March 2, 2011, the Department issued a Notice and Order for Prehearing Conference. The hearing, originally scheduled to take place on September 13, 2011, was continued once at the request of the Department and once at the request of Respondent.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50 and 326B.082, subd. 8.

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. The burden of proof is on the Department to show by a preponderance of the evidence that Respondent's Registration as an unlicensed individual is subject to discipline for failing to cooperate with the Commissioner's request to appear and give testimony and for performing electrical work without the required registration.¹⁰

5. The Commissioner of Labor and Industry may request that a person appear to give testimony and produce documents at a time and place indicated by the commissioner. Persons requested to give testimony or produce documents shall respond within the time and in the manner specified by the commissioner.¹¹

6. The Department has proved by a preponderance of the evidence that on November 29, 2010, the Respondent failed to appear to give testimony and produce documents as ordered by the commissioner, in violation of Minn. Stat. § 326B.082, subs. 2 and 11(b)(6).

7. Except as otherwise provided by law, no individual shall perform and supervise any electrical work except for planning or laying out of electrical work unless the individual is

⁹ Testimony of Chris Williams.

¹⁰ Minn. R. 1400.7300, subp. 5.

¹¹ Minn. Stat. § 326B.082, subs. 2(a)(3) & 2(b).

licensed by the commissioner as a journeyman electrician and the electrical work is for a licensed contractor who employs the individual or is performed under the supervision of a master electrician also employed by the individual's employer.¹² An unlicensed individual shall not perform electrical work required to be performed by a licensed individual unless the individual has first registered with the department as an unlicensed individual.¹³

8. Electrical work means the installing, altering, repairing, planning, or laying out of electrical wiring, apparatus, or equipment for electrical light, heat, power, technology circuits or systems, or other purposes.¹⁴

9. The Department has proved by a preponderance of the evidence that in May 2010 the Respondent performed electrical work in Bloomington, Minnesota, without the required registration as an unlicensed individual, in violation of Minn. Stat. § 326B.33, subs. 2(a) and 13.

10. The Commissioner may deny, suspend, limit, place conditions on, or revoke a person's license or registration if the commissioner finds that the person has committed one or more violations of law or has failed to cooperate with a commissioner's request to give testimony or to produce documents.¹⁵

11. The commissioner may assess monetary penalties against a person required to have a license or registration based on conduct that would provide grounds for action against a licensee or registrant.¹⁶ A licensing order may include an assessment of monetary penalties of up to \$10,000 for each violation or act, conduct, or practice committed by the person.¹⁷

12. In determining the amount of a penalty assessed under this provision, the commissioner shall take the following factors into account: the willfulness of the violation, the gravity of the violation, the history of past violations, the number of violations, the economic benefit gained by the person committing the violation, and other factors that justice may require.¹⁸

13. The Commissioner's penalty assessment is reasonable based on these factors.

Based on the above Conclusions, and for the reasons expressed in the Memorandum attached hereto, the Administrative Law Judge makes the following:

¹² Minn. Stat. § 326B.33, subd. 2(a).

¹³ *Id.*, subd. 13.

¹⁴ Minn. Stat. § 326B.31, subd. 17.

¹⁵ Minn. Stat. § 326B.082, subd. 11(b)(1) & (6).

¹⁶ *Id.*, subd. 1.

¹⁷ *Id.*, subd. 12(b).

¹⁸ Minn. Stat. § 326B.083, subd. 1; Minn. Stat. § 14.045, subd. 3(a).

RECOMMENDATION

IT IS HEREBY RECOMMENDED THAT: the Commissioner affirm the Licensing Order issued to Gabriel Smith.

Dated: January 5, 2012

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 the Department of Labor and Industry (the Commissioner) 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 final decision of the Commissioner shall not be made until this Report has been made 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 Ken Peterson, Commissioner, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155 (651) 284-5126 to learn the procedure for filing exceptions or presenting argument.

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. § 14.63, 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.

MEMORANDUM

The main disciplinary issue in this case is not the performance of electrical work without the required registration. The Respondent is clearly a novice with little, if any, experience in the field before becoming an employee of AMSE. He was not aware of the requirement, and he obtained the registration when he did become aware of it.

The much larger issue is that, upon becoming registered, the Respondent failed to appear to answer questions about regulated work. He testified that he did not know why he failed to appear and that he was unaware of the order until the actual date he was required to appear (November 29, 2010), because the order had been sent to the home of his parents.

The Respondent had provided that address on his registration application, however, and the Department properly used it as his home address. Even if he did not receive notice until that very date, he failed to contact the Department to reschedule and made no effort to comply with the order at any subsequent time.

It may be that the Respondent failed to appear because he was reluctant to answer questions about his father-in-law's business practices. As a registered unlicensed electrical worker, however, his obligation to the public takes priority over any obligation to his employer. Given his refusal to cooperate with the regulatory process, the revocation of his registration and the \$2,000 fine are reasonable disciplinary sanctions.

K.D.S.