

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order
Issued to Brian J. Barrett

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

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on December 22, 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 Brian J. Barrett (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?
3. Did the Respondent fail to notify the Department of his change of address within 30 days of the change, in violation of Minn. Stat. § 326B.33, subd. 13, and Minn. R. 3800.3525, subp. 3?

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:

¹ All references to Minnesota Statutes are to the 2010 edition; references to Minnesota Rules are to the 2009 edition.

FINDINGS OF FACT

1. The Respondent attended Mahtomedi High School and graduated from Tartan High School in Oakdale, Minnesota, in 1996. He thereafter took classes at Century College in White Bear Lake. He is the son of Timothy Barrett, a licensed master electrician and owner of All Main Street Electric (AMSE) in White Bear Lake, Minnesota.²

2. In August 2001, Brian Barrett, doing business as All Main Street Electric, voluntarily terminated an electrical contractor license, apparently for failure to have the required tax and insurance information for employees. On the same date, Timothy Barrett, doing business as All Main Street Electric, applied for and was granted an electrical contractor license.³

3. The Respondent was employed by AMSE from 2004 to the present, except for a short period of time in 2008 when he worked for Alter Recycling.⁴

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

5. Between October 2009 and April 2010, the Respondent performed electrical work on a residence in Mahtomedi, Minnesota.⁵ This was an extensive project involving the replacement of all wiring and devices within the home. AMSE submitted invoices totaling approximately \$63,000 for this work.⁶ Respondent also performed electrical work on a residence in North Oaks, Minnesota, between April and August 2010; this project had a similar scope and cost.⁷

6. 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.⁸ 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 and AMSE wished to bring him into compliance.⁹

7. 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 half a

² Ex. 13.

³ Ex. 17.

⁴ Ex. 13; Ex. 6.

⁵ Ex. 15 (response to Request for Admission No. 11); Testimony of Krista Klecatsky.

⁶ Ex. 3.

⁷ Ex. 15 (response to Request for Admission No. 15); Ex. 11.

⁸ Testimony of John Schultz; Ex. 5.

⁹ Test. of J. Schultz; Testimony of Chris Williams.

dozen jobs between December 2007 and October 2010. According to Mr. Stream, the Respondent was a skilled worker and did not require much supervision.¹⁰

8. On or about October 20, 2010, the Respondent signed an application for registration as an unlicensed electrical worker. He provided a personal address in Vadnais Heights, Minnesota.¹¹

9. On or about October 25, 2010, the Commissioner issued to Respondent a Registration (No. 091634-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.¹²

10. By letter dated November 15, 2010, the Department ordered Respondent to appear on November 30, 2010, at 1:00 p.m., and to provide 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 by both certified and first-class mail at two addresses: the one Respondent identified as his home address on the registration application, and AMSE's business address.¹³ All four mailings were returned by the Post Office as being unclaimed or undeliverable.¹⁴

11. 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.¹⁵

12. 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. This mailing was also sent to the personal address provided by the Respondent as well as AMSE's address. The mailing sent to the personal address was returned by the Post Office as being undeliverable; however, the mailing sent to the AMSE address was not returned, and the Respondent made a timely request for a hearing.¹⁶

13. On March 2, 2011, the Department issued a Notice and Order for Prehearing Conference. The hearing, originally scheduled to take place on September 14, 2011, was continued once at the request of the Department and once at the request of Respondent.

14. On December 6, 2011, the Department entered into a Consent Order with Electrical Storm Damage Consultants LLC, d/b/a Electrical Storm Damage Co., LLC and Brian

¹⁰ Ex. 8; Testimony of Guyan Stream.

¹¹ Ex. 9.

¹² *Id.*; see Minn. Stat. § 326B.33, subs. 12 & 13.

¹³ Ex. 10; Testimony of Chris Williams.

¹⁴ *Id.*

¹⁵ Testimony of Chris Williams.

¹⁶ *Id.*; Ex. 12.

Barrett, individually. The Department had alleged that the company and Brian Barrett had acted or offered to act as an electrical contractor without having a contractor license, in violation of Minn. Stat. §§ 326B.082, subd. 7; 326B.31, subd. 14; and 326B.33, subds. 14 and 17. The Respondents agreed to cease and desist from violating any applicable laws and paid a civil penalty in the amount of \$500.¹⁷

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, for performing electrical work without the required registration, and for failing to advise the Department of a change of address within 30 days of the change.¹⁸

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.¹⁹

6. The Department has proved by a preponderance of the evidence that on November 30, 2010, the Respondent failed to appear to give testimony and produce documents as ordered by the commissioner, in violation of Minn. Stat. § 326B.082, subds. 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 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.²⁰ An unlicensed individual shall

¹⁷ Ex. 18

¹⁸ Minn. R. 1400.7300, subp. 5.

¹⁹ Minn. Stat. § 326B.082, subds. 2(a)(3) & 2(b).

²⁰ Minn. Stat. § 326B.33, subd. 2(a).

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.²¹

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.²²

9. The Department has proved by a preponderance of the evidence that between October 2009 and August 2010 the Respondent performed electrical work in Mahtomedi and North Oaks, Minnesota, without the required registration as an unlicensed individual, in violation of Minn. Stat. § 326B.33, subs. 2(a) and 13.

10. Applicants for registration are obligated to provide the Department with a home address, and they are obligated to keep that information current. They must notify the Department of any change in this information within 30 days.²³

11. The Department proved by a preponderance of the evidence that the Respondent failed to provide a current home address to the Department, in violation of Minn. R. 3800.3525, subp. 3.

12. 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.²⁴

13. 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.²⁵ 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.²⁶

14. 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.²⁷

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

²¹ Minn. Stat. § 326B.33, subd. 13.

²² Minn. Stat. § 326B.31, subd. 17.

²³ Minn. R. 3800.3525, subs. 2 & 3.

²⁴ Minn. Stat. § 326B.082, subd. 11(b)(1) & (6).

²⁵ *Id.*, subd. 1.

²⁶ *Id.*, subd. 12(b).

²⁷ Minn. Stat. § 326B.083, subd. 1; Minn. Stat. § 14.045, subd. 3(a).

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED THAT: the Commissioner affirm the Licensing Order issued to Brian J. Barrett.

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

During the hearing, the Department attempted to call the Respondent as a witness pursuant to Minn. R. 1400.7300, subp. 6, and the Respondent stated that he would not testify. The Administrative Law Judge did not require him to take the stand, but advised him that an adverse inference could be drawn from his refusal to testify. After consideration of this advice and consultation with his attorney, the Respondent again affirmed his decision not to testify as a witness. Because of the strong evidence that the Respondent had performed electrical work

over a lengthy period of time without being registered or licensed, the Administrative Law Judge did not find it necessary to draw an adverse inference to support the conclusion that the Licensing Order should be affirmed.

K.D.S.