

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of David M. Gonsior

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Hearing before Administrative Law Judge (ALJ) Richard C. Luis at 9:30 a.m. on March 27, 2012, at the Office of Administrative Hearings in St. Paul, Minnesota.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). Eric J. Olson, Esq., former attorney for David M. Gonsior (Respondent), also appeared. Respondent was given sufficient time to appear, but there was no appearance by the Respondent. Mr. Olson made a Motion for a Continuance, and that request was denied on the basis that there was no support for a determination of good cause for non-appearance.

Mr. Olson withdrew as counsel for Respondent due to frustration of the attorney client relationship and the ability to defend him appropriately. The record closed at the conclusion of the hearing on March 27, 2012.

The Notice of and Order for Hearing was sent to the Respondent on September 14, 2011. A Status Conference was held on January 19, 2012. After settlement negotiations did not resolve matters, an Evidentiary Hearing convened at the Office of Administrative Hearings on March 27, 2012.

STATEMENT OF ISSUES

1. Whether the Respondent violated Minn. Stat. §§ 326B.082, subd. 7, 326B.084, subd. 2, and 326B.33, subd. 14 (2010) by acting or offering to act as an electrical contractor or technology system contractor without having a license issued by the Commissioner?¹

2. Whether the Respondent violated Minn. Stat. §§ 326B.082, subd. 7, and 326B.33, subd. 1, by engaging in the work of a master electrician without a license issued by the Commissioner?

3. Whether the Respondent violated Minn. Stat. §§ 326B.082, subd. 7, and 326B.36, subd. 4, by failing to file a Request for Electrical Inspection, together with the

¹ Minnesota Statutes (2010).

fees required for the inspection, at or before the commencement of the electrical installation at the Oakdale project?

4. Whether disciplinary action against Mr. Gonsior is in the public interest?

5. Whether the Hearing was requested solely for the purpose of delay, or that the hearing request was frivolous, in violation of Minn. Stat. § 326B.082, subd. 8(d)

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

FINDINGS OF FACT

1. The Respondent has never been licensed by the Minnesota Department of Labor and Industry as a journeyman electrician, master electrician, or electrical contractor.

2. The Respondent made two quotes to the Complainant, an Oakdale homeowner, for proposed electrical work in the lower level of her home. Respondent represented himself to Complainant as a Class A master electrician, insured and bonded. The homeowner had contacted Respondent in response to an ad he had placed on Craigslist.²

3. On September 28, 2010, Respondent moved two electrical outlets and ran an electrical wire for a 40-amp stove from a circuit breaker box located in the garage to the lower level of Complainant's home. Complainant paid the Respondent \$413.00 for the work performed.³

4. On November 4, 2010, the City of Oakdale electrical inspector conducted an inspection of the unlicensed, unpermitted work performed at the Oakdale home and noted violations of the National Electrical Code. The wiring was inadequate and created a fire hazard, not enough outlets were installed, and the outlets installed by the Respondent were not located properly.⁴

5. The Department issued an Administrative Order on August 8, 2011. The Order stated that Respondent must demonstrate (in writing) to the Commissioner's satisfaction that the violations had been corrected. He was ordered also to remove all advertising until he obtains appropriate licensure.

6. The Order assessed a \$20,000.00 monetary penalty against Respondent, of which \$15,000.00 was forgivable if he demonstrated to the Commissioner that he complied with the Corrective Action portion of the Order within 31 days. The Order further required Respondent to cease and desist from offering or performing work as an electrical contractor or technology system contractor in the State of Minnesota until

² Exhibits 2, 13; and Testimony of L.A.

³ Testimony of L.A.

⁴ Testimony of Manteufel.

appropriate licensure was obtained. Failure to comply would be cause for enforcement action by the Commissioner.⁵

7. At a Status Conference on January 19, 2012, the parties agreed that an Evidentiary Hearing, should one be necessary, would convene at the Office of Administrative Hearings on March 27, 2012. commencing at 9:30 a.m.

8. On March 27, 2012, Respondent failed to appear for the Evidentiary Hearing. Mr. Olson (Respondent's attorney) made a Motion for a Continuance, but that request was denied on the basis that there was no support for a determination of good cause for Respondent's absence.

9. Mr. Olson withdrew as counsel for Respondent due to lack of communication with his client.

10. Witnesses were given the opportunity to testify at the Evidentiary Hearing.

11. The Notice and Order for Prehearing Conference on page 3, includes the following paragraph:

1. 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.

12. The Respondent failed to appear at the Hearing. Because the Respondent failed to appear at the Hearing or to contact the Administrative Law Judge prior to the Hearing, the Respondent is in default.

13. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference are taken as true and incorporated by reference in these Findings of Fact.

Based on all the proceedings herein, and on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against the Respondent under Minn. Stat. §§ 14.50, and 326B.01-326B.085.

2. The Department issued proper notice, and has complied with all procedural requirements.

⁵ Exhibit 13.

Willson Legge, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, telephone (651) 284-5126, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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. § 14.62, subd. 1, the Commissioner 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.