OAH 61-1902-22415-2
OAH 61-1902-22416-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order Issued to Hickory Classics, Inc., d/b/a Bohland Homes and Steven Bohl
and
In the Matter of the Licensing Order Issued to Hickory Fine Homes, Inc., and Steven Bohl

**ORDER ON PETITION FOR INTERVENTION**

The above-entitled matter is before Administrative Law Judge M. Kevin Snell (ALJ) on the petition for intervention of Russell and Lori Berman (collectively "the Petitioners").

**Appearances:**

Christopher M. Kaisershot, Assistant Attorney General, on behalf of the Department of Labor and Industry (Department).

Norman I. Taple, Gursetl Chargo, on behalf of Russell and Lori Berman.

Michael D. Coaty, Hull & Van Vliet, on behalf of Hickory Classics, Inc., Hickory Fine Homes, Inc., and Steven Bohl (Respondents).

**Procedural Background**

These consolidated matters are pending before the ALJ pursuant to Notices of and Orders for Prehearing Conference issued on November 18, 2011 and prehearing orders issued on January 17, 2012, and June 18, 2012.

Subpoenas were issued to the Petitioners to testify in this matter on May 10, 2012.

The September 7, 2012 Petition to Intervene was filed with the Office of Administrative Hearings on September 12, 2012.[1]

The Department of Labor and Industry filed a response on September 10, 2012.

Respondents filed their response on September 10, 2012.

Based upon all the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

[1] Minn. Stat. § 14.58.

## ORDER

IT IS HEREBY ORDERED:

1. That the petition of Russell and Lori Berman to intervene as a party in this matter is DENIED.

Dated: September 14, 2012

s/M. Kevin Snell
M. KEVIN SNELL
Administrative Law Judge

## MEMORANDUM

A petitioner may be allowed to intervene as a party, with all the rights of a party, upon a proper showing of how the petitioner's legal rights, duties or privileges may be determined or affected by the contested case.[2] Under the procedural rules for contested case proceedings, anyone not named in the notice of hearing seeking to intervene in a contested case as a party must submit a timely petition to intervene and demonstrate the following:

> The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case; shall show how the petitioner may be directly affected by the outcome or that petitioner's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate petitioner's statutory right to intervene if one should exist.[3]

Petitioners have made no showing as required. In addition, the Petition is untimely. Petitioners have known or should have known of their involvement in these proceedings well before September 7, 2012.

There is no assertion that intervention is needed because the Department is failing to protect the public interest. Intervention based on a claim that an agency is failing to protect the public interest carries a high burden.[4] There is no indication that the Department has not sought to have first-hand evidence, including that possessed by Petitioners, presented in this proceeding. There has been no demonstration that the public interest is not adequately protected.

While there are situations where non-parties may participate without intervention, this is not such a situation. The rules regarding participation without intervention have been analyzed as follows:

---

[2] *Mankato Aglime & Rock Co., Inc. v. City of Mankato*, 434 N.W.2d 490, 492 (Minn. App. 1989).
[3] Minn. Rule 1400.6200, subp. 1.
[4] G. Beck, *Minnesota Administrative Procedure*, § 6.2.3, p. 78, (2nd Ed. 1998).

> In the absence of a petition for intervention, interested persons may, without becoming parties, enter an appearance, offer testimony and exhibits, and question witnesses at a contested case hearing. The extent of such participation is discretionary with the ALJ and is most commonly permitted when the preceding involves questions of legislative fact and important policy issues. The parties normally are entitled to question any persons offering testimony or exhibits under this rule. If the agency is not a party to the contested case and is acting in a quest in traditional capacity only, the ALJ may permit an agency representative to question witnesses. This enables the agency staff to clarify or complete the record.[5]

The issues present in this proceeding are specific to the work performed by, or not performed by, Hickory Classics, Inc., d/b/a Bohland Homes and Steven Bohl. These issues are not legislative facts or policy decisions that would benefit from participation by members of the public in a nonparty role.

The Department has already indicated that it will call Russell Berman as a witness to this proceeding. Respondents have also requested and received subpoenas calling both Russell Berman and Loretta Berman as witnesses. That is the appropriate means of incorporating their evidence into the contested case record.

For the foregoing reasons, the ALJ finds that the Petitioners should not be allowed to participate as parties in this proceeding. Their motion for intervention is denied.

**M. K. S.**

[5] G. Beck, *Minnesota Administrative Procedure*, § 6.2.8, p. 87.