

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF:

THE ALLEGED VIOLATION) Case No. 1103-2011
OF MONT. CODE ANN. § 39-9-301)
BY SUNRISE CONSTRUCTION, INC.)
AND JOHN MULINSKI.) **FINAL AGENCY ORDER**
Contractor Registration No. 61171.)
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I. INTRODUCTION

In this matter, the Department of Labor and Industry seeks a penalty of \$5,000.00 against Sunrise Quality Construction and John Mulinski due to their failure to provide a true address while engaged in contracting in violation of Mont. Code Ann. § 39-9-301(2).

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on March 18, 2011. Joseph Nevin, agency legal counsel appeared on behalf of the department. John Mulinski, though being timely and duly notified of the time for hearing, failed to appear. After waiting 15 minutes for Mulinski to appear, the matter proceeded in his absence.

Mark Fredenberg, Wanda Domrose, Larry Markuson, Judy Cundy, Ron Reeves, Dennis Schwenk, Susan Naive, Richard Parker, and Matt Paszek all testified under oath. Department Exhibits 1 through 8 were all admitted into evidence. Based on the evidence and argument adduced at hearing, the following findings of fact, conclusions of law, and decision are made.

II. ISSUE

Did John Mulinski and/or Sunrise Quality Construction fail to use a true address in violation of Mont. Code Ann. § 39-9-301(2)?

III. FINDINGS OF FACT

1. At all times pertinent to this matter, Sunrise Quality Construction, Inc., has been a contractor registered with the Montana Department of Labor and Industry. John Mulinski is incorporator and owner of Sunrise Quality Construction, Inc.

2. When Mulinski initially registered his business in Montana, he provided to the Department an address of 2809 Great Northern Loop in Missoula, Montana. He also provided an address of 26630 163rd N Court Southeast, Covington, Washington, 98042 (The address that Mulinski identified as his contact address for this proceeding).

3. On September 14, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Sally Naive to perform roofing work on Naive's home. The address which Mulinski represented to Naive in the contract as the address of Sunrise Quality was 5893 N. Highway 93, Whitefish, Montana. Exhibit 8. Naive provided a check for \$3,294.00 to Sunrise as a down payment on the job. Mulinski began the job but failed to finish it and breached his contract with Naive.

4. On September 15, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Mark Fredenberg to perform roofing work on Fredenberg's home (Exhibit 1). The address which Mulinski represented to Fredenberg in the contract as the address of Sunrise Quality was 5893 N. Highway 93, Whitefish, Montana. Exhibit 1. Fredenberg paid Mulinski a down payment on the job of \$4,390.00. Mulinski began the job but failed to finish it and breached his contract with Fredenberg.

5. On September 15, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Wanda Domrose to perform roofing work Domrose's home. The address which Mulinski represented to Domrose in the bid as the address of Sunrise Quality was 5893 N. Highway 93, Whitefish, Montana. Exhibit 2. The address which Mulinski represented to Domrose in the contract as the address of Sunrise Quality was 5895 N. Highway 93, Whitefish, Montana. *Id.* Domrose paid Mulinski a down payment on the job of \$3,488.00. Mulinski began the job but failed to finish it and breached his contract with Domrose.

6. On September 21, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Larry Markuson to perform roofing work on Markuson's

home. The address which Mulinski represented to Markuson in the contract as the address of Sunrise Quality was 5893 N. Highway 93, Whitefish, Montana. Exhibit 4. Markuson provided a check for \$3,128.00 to Sunrise as a down payment on the job. Mulinski began the job but failed to finish it and breached his contract with Markuson.

7. On September 22, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Judy Cundy to perform roofing work on Cundy's home. The address which Mulinski represented to Cundy in the contract as the address of Sunrise Quality was 5895 N. Highway 93, Whitefish, Montana. Exhibit 3. Mulinski began the job but failed to finish it and breached his contract with Cundy.

8. On September 29, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Ron Reeves to perform roofing work on Reeves' home. The address which Mulinski represented to Reeves in the job estimate and contract as the address of Sunrise Quality was 5893 and 5895 N. Highway 93, Whitefish, Montana. Exhibit 6. Reeves provided a check for \$4,200.00 to Sunrise as a down payment on the job. Mulinski began the job but failed to finish it and breached his contract with Reeves.

9. On October 7, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Dennis Schwenk to perform roofing work on Schwenk's home. The address which Mulinski represented to Schwenk in the contract as the address of Sunrise Quality was 5893 N. Highway 93, Whitefish, Montana. Exhibit 7. Schwenk provided a check for \$699.00 to Sunrise as a down payment on the job. Mulinski began the job but failed to finish it and breached his contract with Schwenk.

10. On October 17, 2010, Mulinski and Sunrise Quality Construction entered into a contract with Richard Parker to perform roofing work on Parker's home. The address which Mulinski represented to Parker in the contract as the address of Sunrise Quality was 5893 N. Highway 93, Whitefish, Montana. Exhibit 5. Parker provided a check for \$809.00 to Sunrise as a down payment on the job. Mulinski began the job but failed to finish it and breached his contract with Parker.

11. At no time material to this case was Mulinski or Sunrise Quality Construction ever located or in any way affiliated with the address of 5893 or 5895 N. Highway 93, Whitefish, Montana. Despite this fact, Mulinski repeatedly represented to each of the above home owners in his contracts that Sunrise Quality Construction was located at either 5893 or 5895 N. Highway 93, Whitefish, Montana. In repeatedly telling home owners that Sunrise's address was 5893

or 5895 N. Highway 93, Whitefish, Montana, when in fact the business was not located there, Mulinski and Sunrise Quality Construction failed to use a true address while engaged in the business of a construction contractor. Mulinski's and Sunrise's persistence in using an address that was not true demonstrates conclusively that their conduct was not inadvertent.

12. Mulinski's and Sunrise Quality Construction's repeated failure to use a true address while engaging in the business of a construction contractor demonstrates egregious conduct mandating the maximum penalty permitted by the applicable statute for each violation.

IV. DISCUSSION

A "construction contractor" includes a person, firm or corporation that offers to undertake or undertakes or submits a bid for the installation or repair of roofing. Mont. Code Ann. § 39-9-102. It is unlawful for a construction contractor to fail to use his true address at all times while engaged in the business of construction contracting. Mont. Code Ann. § 39-9-301(2). Upon a showing that a contractor has violated that statute, a tribunal may impose a penalty not to exceed \$5,000.00 per violation.

The Department presented substantial credible evidence in this matter that Mulinski and Sunrise Quality Construction, Inc., repeatedly failed to use a true address while engaged in the business of construction contracting. Mulinski's conduct was serial: he repeatedly failed to give a true address for the business while contracting. No doubt he did this to obscure his trail from these homeowners after taking substantial down payments and then leaving the home owners with partially completed roofing projects. His conduct in this case involved the very harm that the statute was designed to prevent and calls for the maximum penalty per violation that can be imposed under the statute, \$5,000.00. The total penalty imposed against Mulinski is \$40,000.00, representing \$5,000.00 for each failure to use a true address (a total of eight instances in this case) ($8 \times \$5,000.00 = \$40,000.00$).

Also, the Department has requested that this tribunal uphold the suspension of the contractor license at issue in this case. It is clear that Mulinski and Sunrise Construction have repeatedly violated Mont. Code Ann. § 39-9-301(2) and to the extent that such conduct can serve as a basis for a license suspension which this tribunal has the power to impose or review, the license suspension is warranted.

V. CONCLUSIONS OF LAW

1. This tribunal has jurisdiction over this matter.
2. Mulinski and Sunrise Quality Construction, construction contractors, repeatedly failed to use a true address while engaged in the business of contracting in violation of Mont. Code Ann. § 39-9-301(2).
3. Mulinski and Sunrise Quality Construction's failure to use a true address was not inadvertent.
4. Mulinski and Sunrise Quality Construction's repeated failure to use a true address mandates imposition of the maximum penalty of \$5,000.00 for each violation.

V. ORDER

Judgment is entered against Mulinski and Sunrise Quality Construction, Inc. No later than 30 days after mailing of this order, Mulinski and/or Sunrise Quality Construction, Inc., shall pay to the Department of Labor and Industry the sum of \$40,000.00 representing \$5,000.00 for each of the eight violations proven in this case.

DATED this 30th day of March, 2011.

By: /S/GREGORY L. HANCHETT
Gregory L. Hanchett
Hearings Bureau
Department of Labor and Industry

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 2-4-702, by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision.

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.