This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1721

In the Matter of the Electrical Contractor License of Three Stone Paths LLC,
f/k/a B&T Technical Services, LLC,
and the Residential Building Contractor License of Three Stone Paths LLC,
f/k/a B&T Technical Services, LLC,
and the Qualifying Building Registration of Timothy N. Gulden.

Filed July 14, 2025
Affirmed
Johnson, Judge

Minnesota Department of Labor and Industry
File No. 25-1902-39188

Timothy N. Gulden, Winona, Minnesota (self-represented relator)

Keith Ellison, Attorney General, Stephen D. Melchionne, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Labor and Industry)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The commissioner of labor and industry imposed a $4,000 penalty on a limited liability company and its managing member after finding that the company violated a state statute regulating electrical contractor's licenses. We conclude that the commissioner's decision is not affected by an error of law. Therefore, we affirm.

FACTS

This appeal is concerned with the statutory requirements for obtaining and holding an electrical contractor's license, specifically the requirement that a licensed company must designate a licensed master electrician to be the company's "responsible licensed individual" (RLI). *See* Minn. Stat. § 326B.33, subds. 1, 17 (2024). If the contractor is a limited liability company, the RLI "must be a chief manager or managing employee." *Id.*, subd. 17(b). If the contractor is a corporation, the RLI "must be an officer or managing employee." *Id.* If the RLI is a managing employee, the RLI "cannot be employed in any capacity as an electrician, installer, or technician by any other contractor." *Id.* A person may be the designated RLI "for only one contractor or employer." *Id.*

Timothy N. Gulden was the managing member of a company known as B&T Technical Services LLC (B&T) before its name was changed to Three Stone Paths LLC (TSP). In October 2018, Gulden submitted an application on behalf of B&T to the department of labor and industry for an electrical contractor's license. As part of the application, Gulden filed a "certificate of responsible individual master electrician," which designated Thomas Shock as the company's RLI. The department issued a license to the company.

In April 2021, Gulden filed a second certificate, which designated Tracy Saunders as the company's RLI. A checked box on the certificate indicates that the certificate reflects a change of RLIs. The second certificate, which is signed by Saunders, includes the following pre-printed statement:

> Pursuant to M.S. § 326B.33 subd. 17, I understand that if I am not an owner, sole proprietor, general partner, chief manager, or corporate officer of the entity holding the contractor's license, then I must be a managing employee actively engaged in performing electrical work on behalf of the contractor and I am prohibited from being employed in any capacity as a licensed technician or licensed individual by any other contractor or employer.

One month later, Gulden sent an e-mail message to a department employee. Gulden wrote that B&T's "master electrician is vice president (a corporate officer) of my electrical contracting business," that the master electrician works for the company on a part-time basis, and that the master electrician "is going to work full time doing electrician work at another company that does not require him to be the responsible person." Gulden asked whether the statute allows "a corporate officer MN licensed master electrician to be the responsible person at the company they are a corporate officer of while at the same time being employed and doing electrical work for another company that uses a different MN licensed master electrician as their responsible person."

On May 11, 2021, the department employee responded as follows:

> The short answer is yes. If the electrical contractor is a "corporation," the responsible licensed individual must be an officer of the corporation or be a managing employee. There is no prohibition for the "officer" of the corporation from being employed as a rank-and-file electrician by another contractor. However, if the responsible licensed individual is only a hired "managing employee" for the contractor, they must be actively engaged in performing electrical work on behalf of the contractor, and cannot be employed in any capacity as an electrician by another contractor.

The department employee included additional information, including the text of section 326B.33, subdivision 17, and explanations of its provisions.

On the same day on which the department employee answered Gulden's question, Gulden and the other member of B&T executed a member resolution "promoting" Saunders to the position of vice president, effective that day.

Three months later, in August 2021, Gulden filed a third certificate, which designated Karl Drews as the company's RLI. A checked box on the certificate indicates that the certificate reflects a change of RLIs.

In October 2022, the company changed its name. Five days later, the company voluntarily terminated its electrical contractor's license.

In November 2022, the department determined that Gulden and the company had violated section 326B.33, subdivision 17, for multiple reasons: (1) between April and August of 2021, Saunders was ineligible to be the company's RLI because he was not a member of B&T and was employed on a full-time basis as a licensed individual for another company with a contractor's license; (2) between August 2021 and October 2022, Drews was ineligible to be the company's RLI because he was not a member of B&T and was the RLI for another company with a contractor's license; (3) in April and August of 2021, B&T and its RLIs provided misleading information to the department by falsely representing that Saunders and Drews were eligible to serve as B&T's designated RLI; and (4) in May 2021, Gulden misrepresented that Saunders was a corporate officer even though B&T was not a corporation.

As a consequence of these violations, the department retroactively revoked B&T's electrical contractor's license. In addition, the department imposed a monetary penalty of

$2,000 and lifted the stay on a $2,000 penalty that had been imposed in 2018 for a previous license violation, for a total of $4,000 in penalties.

Gulden and TSP challenged the department's determination by requesting a contested-case hearing. The case was heard by an administrative-law judge (ALJ) in February 2023. In June 2024, the ALJ issued an order with findings of fact and conclusions of law that are consistent with the department's determination that Gulden and the company violated the applicable statute. With respect to the department's monetary penalty, the ALJ recommended that the commissioner rescind or reduce the new $2,000 penalty on the ground that the department "did not introduce any evidence as to how the $2,000 additional penalty was calculated."

In October 2024, the commissioner issued an order in which she adopted most of the ALJ's findings and conclusions, except those relating to the monetary penalty, which the commissioner set at $4,000. In an attached memorandum, the commissioner identified the statutory factors governing a monetary penalty. *See* Minn. Stat. § 14.045, subd. 3 (2024). The commissioner stated that the additional $2,000 penalty is justified by evidence that the violations were willful and repeated, that the improper RLI designations benefited the company by allowing it to continue work, that the violations created a risk of injury to customers, and that there was history of prior violations. The commissioner also stated that the additional $2,000 penalty is reasonable because it is considerably less than the $10,000 statutory maximum penalty for a licensing violation. *See* Minn. Stat. § 326B.082, subd. 12(b) (2024).

Gulden appeals by way of a writ of certiorari.

DECISION

Gulden argues that the commissioner erred by imposing the $4,000 penalty. This court's review of the commissioner's order is governed by the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2024). *See* Minn. Stat. §§ 14.63, 326B.082, subd. 8 (2024). In reviewing an agency decision, this court

> may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:
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> (a) in violation of constitutional provisions; or
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> (b) in excess of the statutory authority or jurisdiction of the agency; or
>
> (c) made upon unlawful procedure; or
>
> (d) affected by other error of law; or
>
> (e) unsupported by substantial evidence in view of the entire record as submitted; or
>
> (f) arbitrary or capricious.

Minn. Stat. § 14.69.

Gulden argues that the commissioner erred by imposing a monetary penalty based on B&T's designation of Drews as its RLI on the ground that the department approved the third certificate and thereby contributed to the violation. Gulden explains that the department knew that Drews was the RLI for another licensed contractor and should have rejected B&T's certificate for that reason. We construe Gulden's argument as an argument that the commissioner's decision is affected by an error of law. *See* Minn. Stat. § 14.69(d).

Gulden relies on the following administrative rule:

> Responsible licensed individual for contractor limited to one contractor license. Each contractor shall designate the responsible master electrician or power limited technician employed by the contractor on the application for a contractor's license. The department shall not grant a contractor's license if it appears that the responsible electrician or power limited technician designated is also employed by any other contractor or employer. *In the event that an applicant for a contractor license has designated an employee as the responsible master electrician or power limited technician who is the responsible master electrician or power limited technician for another contractor or employer, or is employed by another contractor or employer, the department shall return the application to the applicant.*

Minn. R. 3800.3540, subp. 1 (2023) (emphasis added). Gulden contends that the third sentence of the quoted paragraph required the department to return the third certificate to B&T and that B&T's non-compliance with section 326B.33, subdivision 17, should be excused by the department's non-compliance with rule 3800.3540, subpart 1.

In response, the department argues that it did not violate the rule on the ground that the certificate designating Drews as the company's RLI was not submitted with an original application for a license but, rather, was a "replacement certificate" indicating that Drews was replacing Saunders as the company's RLI. The department contends that a replacement certificate is governed by a different subpart of the rule, which does not contain any language about returning a certificate to an existing licensed contractor. *See id.*, subp. 3.

To resolve this appeal, we need not decide whether the third sentence of subpart 1 of rule 3800.3540 applies to a replacement RLI certificate, for three reasons.

First, even if the third sentence of subpart 1 applies to a replacement RLI certificate, there is no authority for the proposition that the department had an enforceable duty toward B&T to return the replacement RLI certificate or that the department's failure to do so would excuse Gulden's violations. To the contrary, supreme court caselaw "recognizes that a statute may contain a requirement but provide no consequence for noncompliance, in which case we regard the statute as directory, not mandatory." *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 541 (Minn. 2007). In *Hans Hagen Homes*, a city did not comply with a statute providing that a written statement of reasons for denying a zoning application "must be adopted" and "must be provided to the applicant upon adoption." *Id.* at 539 (quoting Minn. Stat. § 15.99, subd. 2(c) (2004)). The supreme court rejected the applicant's argument that the city's non-compliance with the statute should result in the automatic approval of the application, reasoning that the statutory requirement was merely directory, not mandatory. *Id.* at 539-44. Similarly, in this case, the third sentence of subpart 1 appears to be directory because, among other reasons, the rule does not specify any consequences for the department's failure to abide by it. *See id.* at 541-42. Thus, the department's failure to return the third certificate to B&T does not excuse B&T's violation of the applicable statute.

Second, Gulden's argument would, in essence, equitably estop the commissioner from finding a violation based on B&T's submission of the third certificate. A party seeking to equitably estop a governmental entity must prove, among other things, "wrongful conduct on the part of an authorized government agent." *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 25 (Minn. 2011) (quotation omitted). In this context, proof of wrongful conduct requires "some degree of malfeasance." *See id.* Furthermore, "wrongful conduct is not established by simple inadvertence, mistake, or imperfect conduct." *Id.* (quotation omitted). Gulden has not attempted to show that any department employee engaged in malfeasance or anything more serious than simple inadvertence, mistake, or imperfect conduct. *See id.* Thus, Gulden cannot estop the commissioner from imposing a monetary penalty on B&T for its submission of the third certificate.

Third, Gulden's argument is limited to the violation arising from B&T's submission of the third certificate, which designated Drews as the company's RLI from August 2021 until October 2022. Gulden does not attempt to challenge other violations identified by the commissioner, such as Saunders's ineligibility from April to August of 2021 and Gulden's misrepresentations to a department employee in May 2021. Those violations, as well as a prior violation in 2018, are more prominent in the ALJ's order and the commissioner's order and memorandum than Drews's ineligibility. Thus, even if Gulden could establish an error with respect to the third certificate, he could not show that he "may have been prejudiced" by that error because the commissioner's monetary penalty still would be justified by other violations. *See* Minn. Stat. § 14.69.

In sum, the commissioner did not commit an error of law by imposing a $4,000 penalty. Therefore, we affirm.

Affirmed.