

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

THOMAS FOSS

&

FOSS CONSTRUCTION

RESPONDENTS.

NOTICE OF SUSPENSION
AND RIGHT TO REVIEW

ORDER 0007559

Case # 18 COM 181

TO: Thomas Foss
Foss Construction
W7748 Rainbow Drive
Spooner, WI 54801

You are hereby notified that your dwelling contractor and dwelling contractor qualifier certificates (DC-091600005, DCQ-111802091) are hereby suspended for **eight (8) weeks** as allowed by Wis. Admin. Code § SPS 305.10(1)(a) for engaging in misconduct and for violating Wis. Admin. Code § SPS 320.09. The suspension shall begin on September 21, 2021 and expire on November 16, 2021.

Once the suspension has run you may make a request for reinstatement. You may send your request to dspscredtrades@wisconsin.gov.

BACKGROUND

The Department of Safety and Professional Services received a complaint alleging that you engaged in negligence/incompetence for the project at W5807 O'Brien Road, Trego, Wisconsin, by failing to build a UDC project to code. The Department assigned an investigator to this complaint to determine any and all code violations from this incident.

The basis for this suspension is as follows:

Violations of Wis. Admin. Code § SPS 305.10(1)(a)8. Suspension for violating state regulations.

Wisconsin Administrative Code § SPS 320.09(4) requires that building plans be submitted whenever a UDC building permit is submitted. § 320.09(8) requires that the plans be approved and stamped by the UDC inspection agency.

The investigation found by a preponderance of evidence that sufficient plans were never submitted for this project yet a building permit was issued to you. The investigation failed to find any evidence of stamped plans of any kind (including an apparent one-line drawing plan).

During a deposition you stated that you believed you submitted plans for the project, however, the Department has not received any evidence that plans were submitted. The inspector, James Price, admitted in his deposition that plans were never received or approved. Therefore, a preponderance of evidence finds that you failed to properly submit plans for this project.

For this violation the Department finds it appropriate to suspend your credentials for four (4) weeks as allowed by Wis. Admin. Code § SPS 305.10(1)(a)8. This project was not a "cookie cutter" project and the requirement of plan submittal and approval is to protect the public to ensure that a project will be built to code. As a builder you should not start projects until you have received plan approval.

Violations of Wis. Admin. Code § SPS 305.10(1)(a)5. Suspension for engaging in misconduct.

The Department's investigation found by a preponderance of evidence that you engaged in "misconduct" as defined by Wis. Admin. Code § SPS 305.003(43). Your conduct throughout this project and the investigation has shown a lack of trustworthiness, and a failure to perform the functions of your job. The investigation found that you attended an inspection with Mr. Reedy and Mr. Price on August 20, 2018. On August 21, 2018, Reedy sent an email to you laying out the building code violations he noted from the inspection (NOTE: This inspection report should have been completed by the building inspector). On August 31, 2018, you indicated to Reedy that you finished the building code violations on August 22, 2018, and the building passed inspection. You then later admitted in a deposition and to Reedy that the site never passed inspection. This conduct is untrustworthy and considered misconduct.

For this violation the Department finds it appropriate to suspend your credentials for four (4) weeks as allowed by Wis. Admin. Code § SPS 305.10(1)(a)(5).

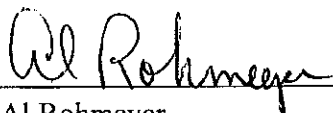
The Department at this time is NOT making a finding on the workmanship for the project and whether you were negligent/incompetent in building the site to the UDC and thus subject to additional discipline. This discretion is being applied due to the misconduct of the inspector and the inability for your company to correct code violations that may have been present at the site.

Based on the foregoing, a suspension of 8 weeks is appropriate and is entered pursuant to the terms laid out in this Order.

You have the right to request a hearing on the suspension by sending a request for hearing to the Department of Safety and Professional Services, Chief Legal Counsel, P.O. Box 7190, Madison, Wisconsin 53707-7190, which must be received by the Department no later than 30 days from the date of mailing of this Notice. The request for a hearing on the suspension shall set out specifically and in full detail every reason why this order is unreasonable, and every issue to be considered by the department at the hearing. Anything not addressed in the request shall be

deemed waived. Any hearing on the suspension will be held in accordance with the requirements set forth in Wis. Stat. ch. 227.

Dated at Madison, Wisconsin on 18 August, 2021.

A handwritten signature in cursive script, reading "Al Rohmeyer", written over a horizontal line.

Al Rohmeyer
Chief Legal Counsel,
Department of Safety and Professional Services