



FLORIDA
DEPARTMENT OF
FINANCIAL SERVICES

000367



FILED

APR 11 2005

Chief Financial Officer
Docketed by: *[Signature]*

Case No. 78055-04-WC

TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

IN THE MATTER OF:

ST. JAMES AUTOMOTIVE, INC.

FINAL ORDER

This cause came on for consideration of and final agency action on a Recommended Order filed on March 4, 2005 by Administrative Law Judge (ALJ) Fred L. Buckine, after the conclusion of a formal administrative hearing conducted in accord with and as provided by Section 120.57(1), Florida Statutes. At that hearing, the Division of Workers' Compensation (the division) was represented by Joe Thompson, Esq., and St. James Automotive, Inc. (St. James), was represented by its president, Richard Conrad, as a qualified representative.

St. James timely submitted Exceptions to the Recommended Order. The division did not submit any Exceptions. Reduced to their essence, St. James Exceptions posit that it should have retained counsel for the hearing, that it was not specifically asked to produce employee classification records, that Paragraph Thirteen (13) of the ALJ's Recommended Order incorrectly recites what was said in St. James' request for a Chapter 120.57(1) hearing relative to employee classification, and disputes the finding in Paragraph Fifteen (15) that Mr. Conrad offered excuses and avoidances in his

testimony. St. James also requested an additional hour to visit with an investigator to review its records.

The decision not to retain counsel was St. James exclusive prerogative, and was exclusively made by St. James. Those who choose to act as their own counsel in legal proceedings do so at their own peril. Such a unilateral decision cannot be assigned as an exception to the outcome of that proceeding. Accordingly, this exception is rejected.

With respect to the findings of fact in Paragraph Thirteen (13), it does appear that the ALJ may have misunderstood and therefore misstated St. James' contentions regarding employee classification stated in its undated "Letter of Petition". In that Letter, St. James represented that three named employees were *not* performing mechanic's duties. The ALJ's Recommended Order incorrectly stated in Paragraph Thirteen (13) that said Letter of Petition represented those employees *were* performing mechanic's duties. Because the Letter clearly states the opposite, that finding cannot be and is not based on competent, substantial evidence. Accordingly, this exception must be accepted. The following is substituted for finding of fact in the first sentence of Paragraph Thirteen: "Mr. Conrad, in his petition for a Chapter 120, Florida Statutes, hearing alleged the 8380 (highest premium rate) class did not apply to three of his employees, himself, Brian Green and William Yagmin." However, as explained below, the ALJ's misstatement and the above substitution are of no consequence to the outcome of this matter.

The division's relevant request to St. James for employee business records reads as follows:

"All documents that reflect the payroll of the employer specified above, during the time period specified above, including **but not limited to:** time sheets, time cards,

attendance records, earnings records, and payroll summaries for both individual employees and aggregate records, check stubs, check ledgers, federal income tax returns and other documents reflecting the amount of remuneration paid or payable to each employee, including documents that reflect cash payments.” (e.s.)

If St. James had payroll records that reflected the classification of its employees, it should have produced them on receipt of the division's request for “All” payroll records. Apparently, St. James either had none or failed to produce them. As noted by the ALJ in Paragraph Thirteen (13), had St. James either enrolled its employees in the workers' compensation program or applied for appropriate exemptions, it would have had that information in its payroll records. It is on those records, not on employers' after-the-fact representations that determinations of employees' classifications are made for workers' compensation purposes. Neither St. James nor any other employer alleged to be in non-compliance with workers' compensation coverage requirements is allowed the opportunity to retroactively classify its employees after non-compliance has been formally alleged. Moreover, the ALJ found that at the hearing St. James produced no evidence showing any error in the classifications assigned by the division based on the records St. James produced. Thus, although accepted, this exception changes nothing.

St. James next exception is directed to the ALJ's recognition of St. James' excuses and avoidances. That exception misunderstands the meaning of those words. Anything offered within the context of a legal proceeding to either exculpate or ameliorate is necessarily an excuse or avoidance. No pejorative meaning is ascribed to those terms. Those terms were neutrally used to show an inconsistency in the testimony of Mr. Richard Conrad, St. James' president. The record supports that observation. Accordingly, this exception is rejected.

St. James' request for an additional hour with a division investigator at this stage of the proceedings demonstrates a profound misunderstanding of the administrative process. St. James elected to proceed, without counsel, into a formal and final hearing conducted by an administrative law judge, at which hearing all evidence and argument in support of its position was to be set forth so that a final decision could be reached. Considerable professional time and taxpayers' money have been expended in according St. James request for such a proceeding. That hearing is an integral part of an adversarial legal proceeding in which significant legal rights, duties, and liabilities are formally and finally determined on the basis of the record established exclusively at that hearing, and not outside that hearing or after that hearing. Those who do not understand this do themselves a disservice.

After review of the record, including the transcript of proceedings, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that, except as specifically noted otherwise herein, the Findings of Fact made by the Administrative Law Judge are adopted as the Department's Findings of Fact, and that the Conclusions of Law reached by the Administrative Law Judge are adopted as the Department's Conclusion of Law.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Administrative Law Judge is adopted by the Department, and that Respondent St. James Automotive, Inc., is directed to pay the sum of \$ 97, 260.75 to the Department, in accord with the conditional release from the Stop Work Order dated August 5, 2004, with credit for any sum paid pursuant thereto prior to this date, and that St. James procure and maintain the necessary workers' compensation coverage for its employees.

DONE AND ORDERED this 11th day of April 2005.



Tom Gallagher,
Chief Financial Officer

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

This is to certify that a copy of the attached Final Order in the matter of St. James Automotive, Inc., was served via United States Mail on April 11, 2005, to Richard Conrad, President of St. James Automotive, and attorneys Joe Thompson and Mike Davidson of the Florida Department of Financial Services.

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