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FLORIDA
DEPARTMENT OF
FINANCIAL SERVICES

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TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

Docketed by:

IN THE MATTER OF:

AFS, LLC

Case No. 80524-05-WC

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DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

This cause came on for consideration of and final agency action on a Recommended Order rendered on August 26, 2005, after a hearing conducted pursuant to Sections 120.57(1), and 120.569, Florida Statutes, by Administrative Law Judge Barbara J. Staros. Petitioner, Department of Financial Services, Division of Workers' Compensation, filed exceptions on September 12, 2005. The Respondent, AFS, LLC, filed a response to the exceptions on September 20, 2005. The transcript of proceedings, the exhibits introduced into evidence, the Proposed Recommended Orders, the Recommended Order, the Petitioner's exceptions, and Respondent's Response, have all been considered during the promulgation of this Final Order.

The Petitioner asserted in its exceptions to Conclusion of Law #36 of the Recommended Order that the Conclusion was erroneous because the Department had not defined two businesses as employers, but rather penalized two businesses for not securing the payment of workers' compensation coverage for the same employees of Greenleads Carpentry, Inc. The Petitioner asserted that it was careful to prove that the Respondent became the "statutory employer" of Greenleads Carpentry, Inc.'s employees by operation of Section 440.10, Florida Statutes.

However, a complete review of the record in this case finds that Conclusion of Law #36 is appropriate. Section 440.10(1)(b), Florida Statutes provides that, "In case a contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employees in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment." Section 440.10(c), Florida Statutes states, in pertinent part that, "A contractor shall require a subcontractor to provide evidence of workers' compensation insurance..." In this case, the Petitioner has not cited authority in the Florida Administrative Code that would permit the Petitioner, under the particular facts of this case, to impose a fine on a contractor, where the contractor credibly demanded and received proof of insurance, but the subcontractor had failed to secure coverage. In accordance with the above discussion, Petitioner's exception to Conclusion of Law #36 is rejected.

The Petitioner excepts to Conclusions of Law #38, 39 and 40 and again argues that the Respondent had a statutory duty under Section 440.10, Florida Statutes to ensure that its subcontractors had secured the workers compensation coverage for its employees. The Petitioner argues that the Administrative Law Judge's reliance on Criterion Leasing Group v. Gulf Coast Plastering & Drywall, 582 So.2d 799 (Fla. 1st DCA 1991) and LaCroix Construction Company v. Bush, 471 So.2d 134 (Fla. 1st DCA 1985) is erroneous, and that the Petitioner's interpretation of Section 440.10(1)(c), Florida Statutes should be afforded great deference. That interpretation being that the burden is on a general contractor or a subcontractor who hires another subcontractor, to ascertain the veracity of the certificate of insurance, despite the fact that

a certificate of insurance was provided. It is admittedly problematic that a contractor may comply with their statutory requirement to secure compensation for uninsured employees of a subcontractor merely by viewing, at an early stage in the construction process, a certificate of insurance. This is especially true when the certificate of insurance may be dubious proof within the factual context of a particular case. Thus, there is a significant potential for abuse in such situations. However, without some formal delineation of the specific obligations of a contractor in ascertaining proof of insurance from a subcontractor, the Department cannot impose a penalty upon the facts presented in the instant case.

In its exceptions, the Petitioner also reasserts its position that the certificate of insurance issued by Labor Finders was not valid. However, the testimony of Ms. Debbie Cochran is clear and unambiguous. She testified that at the time of the issuance of the certificate, the certificate of insurance was valid, for there was a presumption that Greenleads Carpentry, Inc. would use the services of Labor Finders. When Greenleads Carpentry, Inc. did not do so, the certificate became null and void; but at the time of its issuance, and presentation to the Respondent by Labor Finders, that certificate of insurance was valid.

The majority of Petitioner's exceptions recite testimony which the Administrative Law Judge has already considered. In essence, Petitioner is attempting to have different findings of fact and conclusions of law made based upon the same testimony that the Administrative Law Judge has previously considered.

Section 120.57(1)(1), Florida Statutes, provides that rejection or modification of conclusions of law or findings of fact cannot be made unless such findings of fact were not based upon competent substantial evidence, or that the proceedings on which the findings were based did not comply with essential requirements of the law. The findings of fact and conclusions

made by the Administrative Law Judge were based upon the unambiguous testimony of the witnesses and consideration of all facts presented during the hearing. The Petitioner has failed to show any erroneous findings of fact based upon the testimony in the record; instead, Petitioner is asserting a different interpretation than that of the Administrative Law Judge, which is not a basis for vacating the Administrative Law Judge's findings of fact.

As stated, if Petitioner's argument were adopted, it would place a continuing and undelineated burden on the Respondent to follow-up with the issuers of certificates of insurance to make sure that they are valid. In this particular case, the issuer directly issued the certificate of insurance to the Respondent, so there would be no reason for the Respondent to contact the issuer to confirm coverage. As Ms. Cochran testified, had the Respondent requested proof of insurance, the only documentation that would have been sent would have been the certificate of insurance. Further, that certificate of insurance is what Department witness Mr. Allen DiMaria stated he would review to determine if there were coverage. As noted above, the Conclusions of Law of the Administrative Law Judge were based upon the unambiguous testimony of the witnesses and consideration of all the facts presented. In accordance with the above discussions, the Petitioner's exceptions to Conclusions of Law #38, 39 and 40 are rejected.

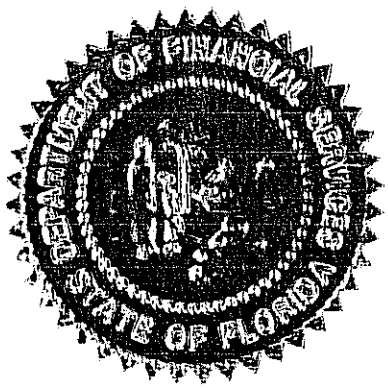
ACCORDINGLY, IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law made by the Administrative Law Judge are adopted as the Department's Findings of Fact, and Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Administrative Law Judge is adopted by the Department, and that the Division of Workers' Compensation rescind the Amended Order of Penalty Assessment issued February 16, 2005 and the Stop Work Order issued to Respondent, AFS, LLC, on January 10, 2005.

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 Fla. R. App.P. 9.110. 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 32399-0333, and a copy of the same and the appropriate filing fee with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 23rd day of November, 2005.



Lisa Miller

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Chief Of Staff

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