



FLORIDA
DEPARTMENT OF
FINANCIAL SERVICES

05-3117



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

MAY 02 2006

Chief Financial Officer
Docketed by: 

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ADMINISTRATIVE
DECISION LINE

Case No. 81975-05-WC

IN THE MATTER OF:

TAK-A-WAY, INC.

FINAL ORDER

This cause came on for consideration of and final agency action on a Recommended Order rendered on March 8, 2006, after a hearing conducted pursuant to Sections 120.57(1), and 120.569, Florida Statutes, by Administrative Law Judge Patricia M. Hart. Respondent, Department of Financial Services, Division of Workers' Compensation, filed exceptions on March 22, 2006. The Petitioner, Tak-A-Way, Inc., did not file a response to the exceptions. The transcript of proceedings, the exhibits introduced into evidence, the Proposed Recommended Orders, the Recommended Order, and the Respondent's exceptions, have all been considered during the promulgation of this Final Order.

The Respondent asserted in its exceptions that although the Administrative Law Judge recommended that the Department approve the Stop Work Order and Second Amended Order of Penalty Assessment with modification to the amount, she did not specify the penalty amount. A complete review of the record in this case does show that the Department is correct in its exceptions.

The Administrative Law Judge finds in the "Recommendation" section, paragraph 3., of the Recommended Order (RO) the Department should issue a final order "... Assessing a penalty against Tak-A-Way, Inc., equal to 1.5 times premium based on the approved manual rate for the classification "Excavation," Code 6217, for the period extending from November 3, 2003, through May 18, 2005, and on the approved manual rate for the classification "Construction and Erection – Permanent Yard," Code 8227, for the period extending from January 1, 2005, through May 18, 2005 as provided in Section 440.107(7)(a) and (d), Florida Statutes..." However, no dollar amount for the penalty is stated in this paragraph.

The Administrative Law Judge correctly noted that the Department's investigator classified all of the Petitioner's payroll during November 3, 2003 through December 31, 2004 under "Excavation" (Code 6217), with an approved manual rate of 13.79; all of Petitioner's payroll during January 1, 2005 through May 18, 2005 under "Concrete Construction" (Code 5213), with an approved manual rate of 24.66; and all of Petitioner's payroll during January 1, 2005 through May 18, 2005 under "Erection" (Code 8227), with an approved manual rate of 9.38. (RO ¶10). The Administrative Law Judge found that there was sufficient evidence to establish that the Petitioner conducted business operations under Codes 6217 and 8227, but not under Code 5213. It was recommended that the payroll classified under Code 5213 be reclassified under the lesser-rated Code 6217. (RO ¶ 12 and 29). This was not disputed by the Respondent. Therefore, the penalty for failure to secure coverage during the January 1, 2005 through May 18, 2005 under Code 6217 is \$7,868.69. The penalty assessed under Section 440.107(7)(d)1., Florida Statutes for the entire period of noncompliance is \$37,290.79. Added to the penalty of \$73,000.00 recommended for working in violation of the May 18, 2005 Stop Work Order brings the total penalty assessed to \$110,290.79.

Pursuant to Section 120.57(1)(1), Florida Statutes, so as to clarify the record in this case and the Recommended Order, the penalty assessed for the failure to have workers' compensation insurance for the entire period of noncompliance is found to be \$37,290.79 plus the \$73,000.00 for working in violation of the Stop Work Order.

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 Tak-A-Way, Inc., is directed to pay the sum of \$110,290.79 to the Department within thirty days from the date hereof.

ACCORDINGLY, IT IS HEREBY FURTHER ORDERED that the Stop Work Order and Order of Penalty Assessment and the Second Amended Order of Penalty Assessment entered by the Division of Workers' Compensation is affirmed, and that Tak-A-Way, Inc., shall cease all business operations unless and until it provides evidence satisfactory to the Division of Workers' Compensation of having now complied with the workers' compensation law by securing the necessary workers' compensation coverage for covered employees and, pursuant to Section 440.107(7)(a), Florida Statutes, paid the civil penalty imposed herein.

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 2 day of May, 2006.



LISA MILLER
Chief of Staff

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