

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL )  
SERVICES, DIVISION OF WORKERS' )  
COMPENSATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-4109  
 )  
KRASHCO, INC., d/b/a J. KRASH'S )  
SPORTS BAR, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice this cause came on for formal proceeding and hearing before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings in Panama City, Florida, on August 25, 2006. The appearances were as follows:

APPEARANCES

For Petitioner: H.F. Rick Mann, Esquire  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-4229

For Respondent: Janis K. Porter-Krashco, pro se  
Krashco, Inc., d/b/a  
J. Krash's Sports Bar  
521 East 4th Street  
Panama City, Florida 32401

## STATEMENT OF THE ISSUES

The issue to be resolved in this proceeding concerns whether the Respondent was operating its business without workers' compensation coverage for employees in violation of the below-referenced provisions of Chapter 440, Florida Statutes, whether it continued its business operations in violation of a Stop Work Order issued August 11, 2005, in purported violation of Section 440.107(7)(a), Florida Statutes (2005), and what, if any, penalty is warranted.

## PRELIMINARY STATEMENT

This cause arose when the Department issued a Stop Work Order against the Respondent on August 11, 2005. The Stop Work Order was issued pursuant to Section 440.107(7), Florida Statutes (2005), charging the Respondent with violating Sections 440.10 and 440.38, Florida Statutes, by failing to secure the payment of workers' compensation for employees, as defined in Section 440.107(2), Florida Statutes (2005). The Respondent elected to dispute the Stop Work Order and to seek a formal proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a Petition. Also on August 11, 2005, the Department served on the Respondent a request for production of business records for Penalty Assessment Calculation. On September 14, and September 19, 2005, Respondent produced business records to the Department's investigator. On

September 26, 2005, an Amended Order of Penalty Assessment was issued by the Department (Amended Order), which imposed on the Respondent a penalty of \$49,979.79. This aggregate penalty represented a penalty of \$11,979.79 pursuant to Section 440.107(7)(d)1., Florida Statutes (2005), for failure to secure payment of workers' compensation and a penalty of \$38,000.00 pursuant to Section 440.107(7)(c), Florida Statutes (2005), for conducting business operations in violation of the Stop Work Order.

The Respondent timely filed a Petition in opposition to the entry of the Stop Work Order and the Amended Order. The Petition was forwarded to the Division of Administrative Hearings and ultimately to the undersigned Administrative Law Judge for the conduct of a formal proceeding.

There was substantial difficulty in the Department's obtaining responses to discovery requests throughout the course of this proceeding. On January 12, 2006, the Department noticed the Respondent, and subpoenaed the sole officer of the Respondent, for a deposition duce tecum. On January 17, 2006, the Department had to move to continue the January 20, 2006, hearing because discovery had not been responded to, and the documents requested in conjunction with the deposition had not been supplied. Two more hearings set in April and May 2006 had

to be continued for the same sort of intransigence by the Respondent concerning its discovery obligations.

The Administrative Law Judge issued an Order that deemed the Department's request for admissions, which had not been responded to, be admitted and directed the Respondent to produce responses to all remaining outstanding discovery requests. Even so, on June 5, 2006, the Department had to move to enforce the earlier Orders which addressed the original Motion to Compel.

In the meantime, on May 11, 2006, based upon information obtained by deposition by the Respondent on April 28, 2006, the Department moved to amend the Amended Order, with leave being granted on May 16, 2006, by the Administrative Law Judge. Thereafter, on July 6, 2006, the Department ultimately filed a Second Amended Order of Penalty Assessment (Second Amended Order) seeking an additional penalty of \$222,000.00 for violation of the Stop Work Order issued August 11, 2005. This resulted in an aggregate penalty assessment against Krasco, Inc., d/b/a J. Krash's Sports Bar in the amount of \$271,979.79.

The cause came on for final hearing on August 25, 2006. At the hearing the Respondent Krashco, Inc., stipulated to the original Amended Order, that is, it indicated that it did not dispute that it had employed at least four employees without securing payment of workers' compensation and had violated the

Stop Work Order as of the date of September 26, 2005, when the Amended Order of Penalty Assessment was issued.

Upon convening of the final hearing on August 25, 2006, in Panama City, it developed that the Department's investigator, Patricia Krossman, was unable to attend due to illness. The Department presented the testimony of Investigator Supervisor William Dorney. The Department's Exhibits 1 through 13 and its cross-examination Exhibits 14A, 14B, 14C, and 14D through 20D were admitted into evidence.

On August 30, 2006, the Department filed an un-opposed Motion to admit as a Department cross-examination exhibit, the transcript of the deposition of the Respondent's designated representative, its accountant, Mr. McDonough, which had been taken before the final hearing. This transcript was admitted. On August 31, 2006, the Department filed a supplement to Exhibit 9 to be admitted to the hearing record, which was without objection and was admitted. On September 1, 2006, with prior leave from the Administrative Law Judge, the Department deposed its Investigator Patricia Krossman and on September 7, 2006, pursuant to the judge's earlier ruling, submitted the transcript of her deposition to be admitted into the evidential record, which it was. Thereafter, on September 8, 2006, with leave of the Administrative Law Judge by ruling at hearing, the Department submitted a late-filed exhibit consisting of

discovery responses belatedly received from the Respondent after the final hearing. These comprised Krashco, Inc.'s checking account statements, check register, and "expenses by vendor summary," and which was identified as "A," "B," and "C." This exhibit was also admitted.

The president of Krashco, Inc., did not testify. Rather the Respondent offered the testimony of one witness, Krashco, Inc.'s Accountant, Mr. Matthew McDonough. The Respondent offered no exhibits into evidence either on direct or cross-examination.

A Transcript was obtained and filed with the Administrative Law Judge. The Petitioner Department submitted a Proposed Recommended Order which has been considered in the rendition of this Recommended Order.

#### FINDINGS OF FACT

1. The Department of Financial Services, Division of Workers' Compensation (Department) is an agency of the State of Florida charged with enforcing the statutory requirements requiring employers to secure the payment of workers' compensation benefits by obtaining insurance coverage therefor for employees, as mandated by Section 440.107, Florida Statutes (2005). The Respondent, Krashco, Inc., d/b/a J. Krash's Sports Bar (Krashco, Inc.) is a Florida corporation domiciled in Panama City, Florida. On August 11, 2005, it was engaged in the

business of operating J. Krash's Sports Bar at 1508 Calhoun Avenue in Panama City, Florida.

2. Patricia Krossman is a Workers' Compensation Investigator for the Department. She conducts investigations into all types of business to verify that they have required workers' compensation insurance coverage or are statutorily exempt. She visited J. Krash's Sports, Bar accompanied by her supervisor, William Dorney, and another investigator on August 11, 2005. J. Krash's Sports Bar is a business owned by the Respondent Krashco, Inc. Upon entering the bar, Ms. Krossman, observed several customers and a bartender. She inquired of the bartender whether the owner was present. She was then introduced to Mr. Matthew McDonough who identified himself as the accountant for Krashco, Inc. Mr. Dorney was present and witnessed this encounter with Mr. McDonough.

3. Mr. Krossman interviewed Mr. McDonough who stated that he handled all the business for Krashco, Inc., and that Krashco, Inc., had one full-time employee and six hourly employees. Mr. McDonough provided the names of those employees to Ms. Krossman and told her that Krashco, Inc., had no workers' compensation insurance policy to cover those employees. This revelation was corroborated by Mr. Dorney who was also present.

4. Mr. McDonough identified Ms. Janis Kay Porter-Krasno as the sole officer of the corporation, Krashco, Inc. He provided

the telephone number for Ms. Krasno and Investigator Krossman telephoned Ms. Krasno. She confirmed the number and the names of the employees of Krashco, Inc., and J. Krash's Sports Bar. She also confirmed that Krashco, Inc., had no workers' compensation coverage.

5. In accordance with Chapter 440, Florida Statutes, insurance carriers report to the Department the issuance to businesses of workers' compensation insurance policies. The Department issues workers' compensation insurance exemptions also. The Department maintains an electronic database of employer coverage and exemptions in its Coverage and Compliance Automated System (CCAS), which allows investigators to determine whether an employer has secured workers' compensation insurance coverage or whether that employer has an exemption from coverage. This database is used in the normal course of the Department's investigations. Ms. Krossman utilized the CCAS data base in the subject investigation. This database confirmed that the Respondent had no workers' compensation coverage and no exemption from coverage from any officer of the Respondent corporation at the time of the investigation. (See Department exhibits three and four in evidence).

6. The Department has a policy or statutory interpretation which it carries out, concerning its duties under Section 440.107(7)(a), Florida Statutes (2005), requiring that if an



employer who is required to secure payment of workers' compensation benefits has failed to do so, that failure is deemed an immediate serious danger to public health safety or welfare and results in the issuance of a "Stop Work Order" by the Department.

7. In view of her investigation as described, Investigator Krossman determined that the Respondent was in violation of the workers' compensation law. This was because it employed more than four individuals, for whom the Respondent was required to secure the payment of workers' compensation and yet had no workers' compensation for any of its employees. Investigator Krossman's supervisor, Mr. Dorney, reviewed the results of Ms. Korssman's investigation and agreed with her and authorized her to issue a Stop Work Order to the Respondent due to its failure to comply with the relevant requirements of Chapter 440, Florida Statutes. Indeed, the Respondent ultimately stipulated its liability for the charge that it violated Section 440.107(7), Florida Statutes (2005), by not securing the payment of workers' compensation for the employees in question.

8. The Stop Work Order was served on Krashco, Inc., on August 11, 2005, alerting that employer in accordance with Section 440.107(7)(d), Florida Statutes (2005), that a penalty would be assessed and that the penalty might be amended based on further information obtained, including the production of

business records by the employer. The Stop Work Order also advised that if the employer conducted any business operations in violation of the Stop Work Order that a penalty of \$1,000.00 per day of violation would be assessed.

9. Under the mandate of Section 440.107(5), Florida Statutes (2005), and Florida Administrative Code Rule 69L-6.015, Florida employers are required to maintain business records that enable the Department to determine whether an employer is complying with the workers' compensation law. On August 11, 2005, Ms. Krossman issued and hand served on Krashco, Inc., a written request for production of business records for purposes of a penalty assessment calculation.

10. On September 14 and 19, 2005, the Respondent's accountant provided business records to the Department. After reviewing those business records, Investigator Krossman again consulted with her supervisor Mr. Dorney, who authorized her to issue an Amended Order of Penalty Assessment. The Amended Order of Penalty Assessment is the Department's Exhibit 9 in evidence. The Amended Order was issued and served on Respondent on September 26, 2005, and assessed a total penalty of \$49,979.79 under the authority of Section 440.107(7)(d)1. and (c), Florida Statutes (2005). The penalty calculations pertaining to each of the employees listed appeared in a three page worksheet attached and incorporated as part of Department's exhibit nine in

evidence. Investigator Krossman selected the appropriate NCCI class code for Krashco Inc.'s business, and its corresponding premium rate, in order to apply that to each employee's wages. The Department relies on these premium rates and the classification codes for these purposes in the normal course of its regulation of such matters.<sup>1/</sup> Ultimately, at hearing, the Respondent stipulated that it did not dispute the charge in the Amended Order and does not dispute the accuracy of the penalty calculation.<sup>2/</sup>

11. In light of the requirements of Section 440.107(7)(d)1., Florida Statutes (2005), Investigator Krossman calculated the penalty for the period of non-compliance back to September 1, 2002, pursuant to the three year "reach back standard" in the statute. The premium which had thus been evaded which the Respondent would have paid had it secured workers' compensation insurance was thus shown to be \$7,986.43. The statutorily provided penalty on that amount of evaded premium multiplied by the statutory standard of 1.5 times resulted in a penalty amount of \$11,979.79.

12. Respondent also stipulated at the hearing that it had violated the Stop Work Order issued on August 11, 2005, by continuing to conduct its business operations of J. Krash's Sports Bar through September 19, 2005. This engendered an additional penalty as provided in Section 440.107(7)(a) and (c),

Florida Statutes (2005). Investigator Krossman calculated the additional penalty at \$1,000.00 per day of violation time from August 12, 2005 through September 19, 2005, at \$38,000.00. This results in a total aggregate assessed penalty, pursuant to the Amended Order, of \$49,979.79.

13. The business of Respondent Krashco, Inc., is J. Krash's Sports Bar. Its principal place of business is 1508 Calhoun Avenue, Panama City, Florida 32405. Section 440.107(7)(a), Florida Statutes (2005), requires a cessation of all business operations by an employer when a Stop Work Order is issued by that employer by the Department. The Stop Work Order "shall remain in effect until the Department issues an order releasing the Stop Work Order upon a finding that the employer has come into compliance with the coverage requirements of this Chapter and has paid any penalty assessed under this section."<sup>3/</sup>

14. Krashco, Inc., has never paid any part of the assessed penalty pursuant to the Amended Order or the Second Amended Order filed later. The Department has never issued an Order of Release from the Stop Work Order.

15. Nevertheless, the Respondent Krashco, Inc., after September 19, 2005, continued the business operations of J. Krash's Sports Bar.

16. Officers of corporations may elect an exemption from coverage under the workers' compensation law as an employee (see

Section 440.05). This exemption is effective, however, only for the corporation listed in the eligible officer's Notice of Election to be Exempt and which is paying that officer's salary or wages.

17. Three new corporations were formed whereby the previous employees of Krashco, Inc., d/b/a J. Krash's Sports Bar became officers of Krashco, Inc., and those three new corporations. This is because Krashco, Inc., needed people to operate the bar on its behalf to buy goods and services to sell and dispense at its business, J. Krash's Sports Bar. Krashco, Inc.'s former employees became officers of these three newly created corporations and two of the former employees became officers of the Respondent Krashco, Inc.

18. Krashco, Inc., d/b/a J. Krash's Sports Bar verbally contracted with these new officers of the new corporations to perform the same services for its business, J. Krash's Sports Bar, that those same individuals had been performing before becoming officers of these corporations, performing security, catering, and bartending services. Krashco, Inc.'s, principals were of the belief that it was necessary to secure the services in this manner in order to continue the operation of its business, without employees, so that it would no longer be required to have workers' compensation coverage for them.

19. After August 11, 2005, and through most of the remainder of 2005, Ms. Janis Krasno, the President of Krashco, Inc., continued to pay these new officers, the former employees, directly with checks drawn on Krashco Inc.'s account and made payable to the individual officers as payees (not to their corporation) for the same services they had performed for the benefit of J. Krash's Sports Bar.<sup>4/</sup>

20. Keith Larson, an employee of Krashco, Inc., became an officer of the original Krashco, Inc., as well as Crashco, Inc., one of the three newly created corporations. Keith Larson elected an exemption from Chapter 440 as an officer of Krashco, Inc. Larson's election of exemption with Krashco, Inc., however, did not become effective until November 2, 2005. Consequently, Keith Larson continued to be paid by Krashco, Inc., as an employee through at least November 1, 2005.

21. Six other Krashco, Inc., employees were granted exemptions (as officers of the other corporations) by the Petitioner from the requirement of workers' compensation coverage, which were all effective on August 22, 2005. This reduced the number of employees of record to less than the compliment of four (or more) for which coverage is required. This would seem, under only these circumstances, to represent the expiration of liability by the Respondent for failure to secure payment of workers' compensation and to also be the date

the Stop Work Order should be rescinded and further penalties tolled.

22. The fact is, however, that Ms. Krasno and the Respondent, Krashco, Inc., as found below, continued to pay these "former employees" with Krashco, Inc., checks made to them individually (not to their corporations), for the same job duties, until December 15, 2005. Thus they continued to function as employees of the Respondent, Krashco, Inc., until that date. After that date they were paid by a new corporation, Crashco, Inc.

23. Ms. Janis Krasno, President of Krashco, Inc., continued to operate and run J. Krash's Sports Bar as an officer of and on behalf of Krashco, Inc., through April 28, 2006. This included payment of Krashco's expenses occasioned in the operation of the business.

24. Ms. Krasno, President of Krashco, Inc., wrote checks through December 15, 2005, drawn on Krashco, Inc.'s bank account to pay for Krashco, Inc.'s business operation expenses, all of which were for the benefit of operating J. Krash's Sports Bar.

25. Ms. Krasno as President of Krashco, Inc., issued checks through December 15, 2005, drawn on that corporation's account to pay the individual officers of the three new corporations which had been formed, and of Krashco, Inc., for those officers' bartending, security, and catering services, all

of which were performed to continue and perpetuate the operation of J. Krash's Sports Bar.

26. Ms. Krasno issued checks through December 15, 2005, on Krashco, Inc.'s account, to promote sales, by the promotion of upcoming activities to be held at the bar, or to purchase goods for sale at J. Krash's Sports Bar, from various vendors, for non-alcoholic drinks, restaurant supplies, food and other goods for parties. Such payments were also used to pay vendors such as Goldring Gulf Distributing Company and other distributors for alcoholic beverages to be sold in the operation of J. Krash's Sports Bar, and for incidental expenses.

27. From August 12, 2005 through December 15, 2005, and through April 28, 2006, J. Krash's Sports Bar was generally open for business seven days a week from 2:00 p.m. to 4:00 a.m.

28. Since September 19, 2005 through April 28, 2006, Ms. Krasno still controlled the management and operations of Krashco, Inc., d/b/a J. Krash's Sports Bar. On December 21, 2005, however, Krashco, Inc.'s, president, Ms. Krasno, who also became president of Crashco, Inc., began issuing checks drawn on the bank account of Crashco, Inc., to pay for expenses occasioned in the operation of the Respondent's business J. Krash's Sports Bar. These were payments to the same officers she had been paying since September 19, 2005, for their bartending, security, and catering services, as well as to



essentially the same vendors for purchases of alcoholic beverages, etc. for sale at J. Krash's Sports Bar. Through the date of the final hearing Ms. Krasno, with checks drawn on the account of Crashco, Inc., purchased alcoholic beverages on behalf of Krashco, Inc., the holder of liquor license BEV1301819, in order to continue the business operations of Krashco, Inc., d/b/a J. Krash's Sports Bar.

29. After December 21, 2005 and through April 28, 2006, income of sales at J. Krash's Sports Bar was deposited in Crashco, Inc.'s account.

30. After entry of the Amended Order on September 26, 2005, the Respondent timely filed its request for a formal proceeding on October 14, 2005. This rendered the initial agency action to be non-final, to await the outcome of this de novo, proceeding.

#### CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2006).

31. The Department has the burden of proof in this case. It must demonstrate by clear and convincing evidence that the Respondent violated the workers' compensation law during the relevant periods of time and that the penalty assessments are correctly calculated and imposed. Department of Banking and

Finance Division of Securities and Investor Protection v.  
Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

32. Every employer is required to secure workers' compensation insurance for its employees.

§§ 440.10(1)(a) and 440.38(1), Fla. Stat. (2005).

33. Employers are subject to the requirement of providing workers' compensation coverage as set forth in Section 440.02(16), Florida Statutes (2005), which states in pertinent part:

(a) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. "Employer" also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of §§ 440.105, 440.106, and 440.107

34. The nature of employment that is being considered here is defined at Sections 440.02(17)(a) and (b) (2005), where it states:

(a) 'Employment,' subject to the other provisions of this chapter, means any service performed by an employee for the person employing him or her.

(b) 'Employment' includes:

\* \* \*

2. All private employments in which four or more employees are employed by the same employer or, with respect to the construction industry, all private employment in which one or more employees are employed by the same employer. (Emphasis supplied).

35. Certain categories of employees are subject to the protection of the workers' compensation law. Relevant to this case, "Employee" is defined at Section 440.02(15), as:

(a) any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

(b) "Employee" includes any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous.

\* \* \*

36. The liability for employers to provide workers' compensation is set forth in Section 440.10(1)(a), which states:

440.10 Liability for compensation.--

(1)(a) Every employer coming within the provisions of this chapter shall be liable for, and shall secure, the payment to his or her employees, or any physician, surgeon, or pharmacist providing services under s.

440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. Any contractor or subcontractor who engages in any public or private construction in the state shall secure and maintain compensation for his or her employees under this chapter as provided in s. 440.38.

37. Respondent Krashco, Inc., d/b/a J. Krash's Sports Bar was engaged in "employment" as defined in Sections 440.02(17)(a) and (b)2, Florida Statutes (2005).

38. Respondent Krashco, Inc., d/b/a J. Krash's Sports Bar was obligated to secure the payment of workers' compensation for its "employees," as that term is defined in Sections 440.02(15)(a) and (b), Florida Statutes (2005). See §§ 440.10(1)(a), Fla. Stat. (2005).

39. Respondent Krashco, Inc., was obligated to secure the payment of compensation in the manner described in Section 440.38, Florida Statutes (2005). The Respondent, Krashco, Inc., failed to do so.

40. Section 440.107(3) explains the Department's authority to enforce workers' compensation coverage requirements where it states:

The department shall enforce workers' compensation coverage requirements, including the requirement that the employer secure the payment of workers' compensation, and the requirement that the employer provide the carrier with information to accurately determine payroll and correctly assign classification codes. In addition to

any other powers under this chapter, the department shall have the power to:

(a) Conduct investigations for the purpose of ensuring employer compliance.

\* \* \*

(c) Examine and copy business records.

\* \* \*

(g) Issue stop-work orders, penalty assessment orders, and any other orders necessary for the administration of this section.

41. On August 11, 2005, Investigator Krossman properly conducted an investigation of Respondent pursuant to Section 440.107(7)(3), Florida Statutes (2005).

42. Records requested by Investigator Krossman from Respondent were in keeping with Sections 440.107(3)(c) and 440.107(5), Florida Statutes (2005), and Florida Administrative Code Rule 69L-6.015.

43. Section 440.107(5), Florida Statutes (2005), provides that every employer is required to maintain and produce business records to comply with Section 440.107. Florida Administrative Code Rule 69L-6.015, promulgated pursuant to the authority of Section 440.107(5), Florida Statutes, identifies records that are included in such business records.

44. In relation to the Stop Work Order and the Amended Order, Section 440.107(7)(a) and (d), Florida Statutes (2005), states in pertinent part:

(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 5 business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to the public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirement of this chapter and has paid any penalty assessed under this section. . . .

\* \* \*

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall

assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 1.5 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 3-year period or \$1,000, whichever is greater.

45. Investigator Krossman was authorized to seek the production of the Respondent's business records. The Respondent had four or more employees who were entitled to payment of workers' compensation and that payment was not secured by the Respondent.

46. Investigator Krossman and the Department were justified in issuing the Stop Work Order on August 11, 2005, in accordance with Section 440.107(7)(a), Florida Statutes (2005). Under that statutory authority the Stop Work Order remained in effect until the Respondent, Krashco, Inc., might demonstrate compliance with the coverage requirement for workers' compensation.

47. The penalty assessment proposed for Respondent Krashco, Inc.'s failure to comply with the coverage requirements for workers' compensation properly covers the period of September 1, 2002 through September 19, 2005, as to the Amended Order. This is in recognition that the Respondent had not provided workers' compensation coverage at anytime during that

period for its business known as J. Krash's Sports Bar. Thus the Respondent is subject to the penalty assessment calculations under the formula contemplated in Section 440.107(7)(d)1., Florida Statutes (2005).

48. The Department appropriately issued the Amended Order of Penalty Assessment on September 26, 2005, and appropriately used the payroll figures provided by the Respondent for calculation of the penalty assessment.

49. The Department satisfied its burden of proving by clear and convincing evidence that Respondent failed to secure the payment of workers' compensation as defined in Section 440.107(2), Florida Statutes (2005), and that it correctly assessed the penalty described in Section 440.107(7)(d)1., Florida Statutes (2005), as to the Amended Order, for that failure. Additionally, the Respondent stipulated that it did not dispute the charge and penalty assessed in the original Amended Order issued September 26, 2005.

50. The Department also proved that the Respondent continued its business operations after the Stop Work Order was issued on August 11, 2005, and did so continuously through September 19, 2005, and beyond.

51. The preponderant evidence shows that the exemptions accorded the six employees, effective August 22, 2005, reduced the compliment of employees for the Respondent corporation below



the threshold, above which workers' compensation coverage is required, by the above-referenced statute.

52. The Respondent corporation, however, with checks drawn on its account by its president, continued to pay these people individually for the same duties, in the same manner, as before August 22, 2005, the date of these exemptions. Thus for factual and legal purposes, in light of the above authority, they still functioned, and were paid as employees of the Respondent, Krashco, Inc. This means that the Respondent was still liable under the above-referenced authority, for securing workers' compensation coverage through December 15, 2005. After that date the personnel were paid by the separate corporation, Crashco, Inc., so that the Respondent corporation no longer had an employment relationship with sufficient employees so that workers' compensation coverage would be required.

53. Section 440.107(7)(a), Florida Statutes (2005), quoted above, provides that a Stop Work Order will remain in effect until the employer is in compliance with coverage requirements " . . . and has paid any penalty assessed under this section. . . ." The Respondent filed its request for formal proceeding and hearing on October 14, 2005. When that was done the coverage issue, the Stop Work Order and the question of penalty became non-final agency action until this de novo proceeding could be conducted, evidence taken and legal authority considered in

arriving at a determination of the coverage question, the validity of the Stop Work Order and whether any penalty is warranted, its manner of assessment, and its scope and amount.

54. That determination can now be made. The preponderant, persuasive evidence supporting the above findings of fact establishes that the Respondent, Krashco, Inc., was in violation of the above-referenced workers' compensation coverage requirements, the Stop Work Order and is liable for the related penalty assessment for the period charged to, and including, December 15, 2005.

55. The preponderant evidence shows that after that date, during the pendency of this de novo proceeding, that the Respondent sufficiently altered its operation and its manner of securing and paying for services and goods necessary to operation of the business so as to comply with the referenced legal authority.

56. It has therefore been established that, as to the Amended Order, the proposed aggregate penalty of \$49,979.79 is appropriate. In addition to this, a portion of the penalty for violation of the Stop Work Order, represented by the Second Amended Order, for the period from September 19, 2005 through December 15, 2005, should be imposed for an additional amount of \$87,000.00 in penalty, a total of \$136,979.80. Additionally, an assessment for the lack of coverage for the period of

September 19, 2005 through December 15, 2005, at 1.5 times the amount the Respondent would have paid in premium, based on the formula depicted in Subsection 440.107(7)(d)1, Florida Statutes (2005), should be imposed.

RECOMMENDATION

Having considered the foregoing findings of fact, the conclusions of law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Financial Services, Division of Workers' Compensation assessing, under the Amended Order of Penalty Assessment, the Second Amended Order of Penalty Assessment and the Stop-Work Order, a penalty in the total amount of \$136,979.80, together with an additional assessment for failure to secure coverage for the period of September 19, 2005 through December 15, 2005, in the manner provided in Subsection 440.107(7)(d)1., Florida Statutes (2005).

DONE AND ENTERED this 8th day of January, 2007, in  
Tallahassee, Leon County, Florida.



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P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of January, 2007.

ENDNOTES

<sup>1/</sup> See, e.g., Department of Labor and Employment Security, Division of Workers' Compensation v. Bobby Cox, Sr., d/b/a C.H. Well Drilling, DOAH Case No. 99-3854 (Recommended Order March 20, 2000), Final Order June 8, 2000, adopting in part: Department of Labor and Employment Security, Division of Workers' Compensation v. Eastern Personnel Services, Inc., DOAH Case No. 99-2048 (Final Order entered November 30, 1999).

<sup>2/</sup> See also Order entered May 15, 2006, deeming these matters admitted as to the charge and the accuracy of the penalty calculation concerning the amended order.

<sup>3/</sup> See § 440.107(7)(a), Fla. Stat. (2005).

<sup>4/</sup> See § 440.107(02)(15)(a), Fla. Stat. (2005).

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.