



FLORIDA
DEPARTMENT OF
FINANCIAL
SERVICES

ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

IN THE MATTER OF
J AND A FRAMING, INC.

FILED

2007 APR 13 P 1:40

APR 12 2007

Chief Financial Officer
Docketed by: *[Signature]*

DIVISION OF
ADMINISTRATIVE
HEARINGS
000285



Case No. 85946-WC

FINAL ORDER

This cause came before Alex Sink, as Chief Financial Officer, for consideration of and final agency action on a Recommended Order rendered on February 2, 2007, pursuant to a formal hearing conducted under section 120.57(1), Fla. Stat., by Administrative Law Judge Daniel M. Kilbride. The sole issue considered at that hearing was whether the doctrine of equitable tolling should have been invoked to allow the Respondent the opportunity to belatedly challenge a Stop Work Order and an Amended Order Of Penalty Assessment.

The Recommended Order concluded that the Respondent had failed to carry its burden of proof showing that the doctrine of equitable tolling should be applied to allow a late challenge, and recommended dismissal of the Respondent's belated request to file a petition challenging the Stop Work Order and Amended Order Of Penalty Assessment. The Respondent untimely filed a Proposed Recommended Order 47 days after the due date, and three days after the Recommended Order had been rendered. The Petitioner filed a motion to strike the Respondent's untimely filed Proposed Recommended Order, which motion is denied as moot. The Respondent did timely file exceptions to the Recommended Order. The Petitioner timely filed a response to the

Respondent's exceptions. Respondent thereafter filed a reply to the Petitioner's response to Respondent's exceptions. Because there is no provision for the filing of a reply to a response to exceptions, the reply has not been considered. The Recommended Order, the transcript of proceedings, the admitted exhibits, the Respondent's exceptions, the Petitioner's response thereto, and applicable law have all been considered during the promulgation of this Final Order.

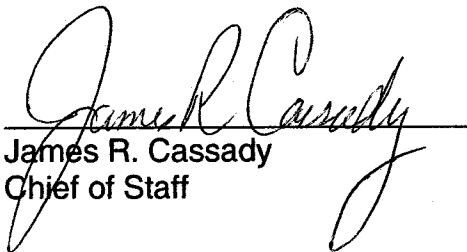
RULINGS ON THE RESPONDENT'S EXCEPTIONS

The Respondent filed numerous exceptions to the Recommended Order, each of which improperly requests that this agency re-weigh the factual evidence in favor of the Respondent. Each exception was individually reviewed, but all shared the same defect. In each exception the Respondent merely re-argued the weight and persuasiveness of the hearing testimony, and urged the department to reject the administrative law judge's findings of fact and enter substituted findings of fact that would justify applying the doctrine of equitable tolling in the Respondent's favor. It is well-established that it is the province of an administrative law judge to weigh all evidence, judge the credibility of all witnesses, resolve all conflicts, and make all permissible inferences in the proceedings over which that judge presides. Bejarano v State, Dept. of Educ., Div. of Vocational Rehabilitation, 901 So.2d 891 (Fla. 4th DCA 2005). It is equally well established that an agency may not re-weigh that same evidence during promulgation of a final order, or alter or amend findings of fact supported by competent substantial evidence. Gross v. Department of Health, 819 So.2d 997 (Fla. 5th DCA 2002); Packer v. Orange County School Bd., 881 So.2d 1204 (Fla. 5th DCA 2004). Each of the Respondent's exceptions invites this department to violate those well established precepts. Accordingly, the

Respondent's exceptions are denied. Brogan v. Carter, 671 So.2d 882 (Fla. 1st DCA 1996); Prysi v. Department of Health, 823 So.2d 823 (Fla. 1st DCA 2002).

The Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted as the department's Findings of Fact and Conclusions of Law. The Respondent's request to late file a petition challenging the Petitioner's Stop Work Order and Amended Order of Penalty Assessment is denied, and the Stop Work Order and the Amended Order of Penalty Assessment remain in effect.

DONE AND ORDERED this 12 day of ~~March~~^{April}, 2007.


James R. Cassady
Chief of Staff

XC: Dan N. Godfrey
1200 North Central Avenue, Suite 209
Orlando, Fl. 34741

John M. Iryie
200 East Gaines Street
Tallahassee, Fl. 32399

Daniel M. Kilbride
1230 Apalachee Parkway
Tallahassee, Fl. 32399-3060