



REPRESENTING
ALEX SINK
 CHIEF FINANCIAL OFFICER
 STATE OF FLORIDA

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Chief Financial Officer
 Docketed by: *[Signature]*

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DIVISION OF
 ADMINISTRATION
 HEARINGS
 000767

IN THE MATTER OF:

KEITH MYER, d/b/a CUSTOM
 INTERIORS and DESIGN, INC. /

CASE NO. 89667-07-WC

FINAL ORDER

This cause came on for consideration of and final agency action on a Recommended Order rendered on September 28, 2007 (Attached as Exhibit "A"), after a hearing was conducted pursuant to Sections 120.569 and 120.57(1), Florida Statutes by Administrative Law Judge, Ella Jane P. Davis. Both Petitioner and Respondent filed a Proposed Recommended Order. On October 12, 2007, Petitioner timely filed exceptions to the Recommended Order (Attached as Exhibit B"). Each exception is addressed below. Respondent did not file exceptions.

RULINGS ON PETITIONER'S EXCEPTIONS

Petitioner excepts to the Administrative Law Judge's Conclusion of Law 33 wherein the Judge ruminates that Chapter 440, Fla. Stat. was enacted, in part, to inure to the benefit of both employers and employees in the State of Florida. Petitioner further excepts to the Administrative Law Judge's recommendation that the agency "compromise the fine" assessed against Respondent.

Petitioner's exception to the Administrative Law Judge's commentary regarding the structure and purpose of Chapter 440, Fla.Stat., is REJECTED. Judges are permitted and often do provide commentary in connection with statutory provisions in their orders. The ruminations, whether correct or incorrect, are not matters that generally need to be rectified because they do not change the outcome of this proceeding where the Administrative Law Judge correctly and ultimately concluded that, according to the law, the fine is owed.

Conversely, Petitioner's exception to that portion of Conclusion of law 33 wherein the Administrative Law Judge recommends that the agency compromise the fine or work out a payment schedule is ACCEPTED. As the Petitioner correctly stated, consideration of whether a

person is injured or that the assessed penalty creates a hardship are not factors the Department may consider when determining whether a penalty is appropriate under Ch. 440, Fla. Stat. Further, Section 440.107(7)(a), Fla. Stat. and Fla. Admin. Code R 69L-6.025, provide a mechanism whereby Respondent, in the instant case, may enter into a payment plan to pay the penalty amount.

After careful consideration of the transcript of proceedings, the exhibits introduced into evidence, the Proposed Recommended Orders, the Recommended Order and Exception and being otherwise fully advised in the premises, it is ORDERED:

1. The Findings of Fact made by the Administrative Law Judge are adopted herein as the Department's Findings of Fact.

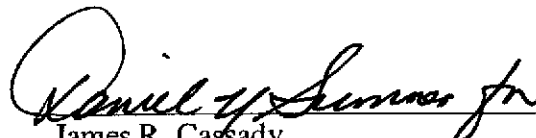
2. The Conclusions of Law of the Administrative Law Judge, with the exception of Conclusion of Law 33, which is modified as stated herein, are adopted as the Department's Conclusions of Law.

3. The Recommendation made by the Administrative Law Judge is adopted by the Department, and that the final penalty in the sum of \$18,937.37 payable to the Department by Keith Myer d/b/a Custom Interiors and Design, Inc. is ADOPTED.

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 5 day of November, 2007.


James R. Cassady
Chief of Staff