



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

2008 MAY 20 A 11:53

DIVISION OF
ADMINISTRATIVE
HEARINGS

IN THE MATTER OF:

VERSA-TILE AND MARBLE, INC.
_____ /

Case No. 91483-07-WC

FILED

APR 25 2008

FINAL ORDER

Docketed by: ALH

This cause came on for consideration of and final agency action on the Recommended Order filed on January 25, 2008, by Administrative Law Judge Harry L. Hooper (ALJ), pursuant to a formal hearing conducted on November 30, 2007, recommending the imposition of a penalty in the amount of \$ 12, 683.35 against Versa-Tile and Marble, Inc. (Versa-Tile), for non-compliance with Florida's workers' compensation statutes. The Department of Financial Services (Department) timely filed an exception to the Recommended Order, and Versa-Tile timely filed a response thereto. The Recommended Order (a copy of which is attached hereto as Exhibit A, and is incorporated hereinto), the transcript of proceedings in the formal hearing, the exhibits introduced into evidence, the Department's exception and Versa-Tile's response thereto, and applicable law have all been considered during the promulgation of this final order.

RULINGS ON THE DEPARTMENT'S EXCEPTION

The Department takes exception to the following sentence in Paragraph 36 of the ALJ's Conclusions of Law:

"Applying the maximum penalties set forth in Subsection 440.107(7) (d) 1., Florida Statutes, for the time they worked from April 26, 2006, going forward, is too harsh and does not further the purposes of Chapter 440."

The Department argues that commenting on the harshness of the statutorily prescribed penalty implies that the Department has the discretion to impose a lesser penalty, which discretion the Department does not, in truth, possess, as the penalties are prescribed by statute.

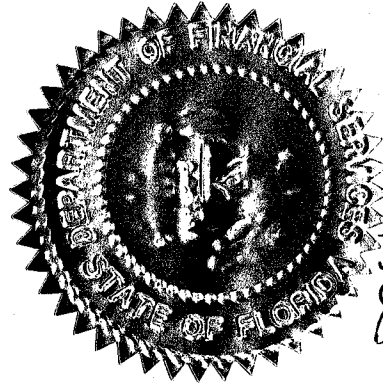
Any such implication is cured by the ALJ's express recognition of the legislatively imposed constraints regarding prescribed penalties, found in Paragraph 37 of the Recommended Order. Thus, the ALJ's editorial observation relative to the harshness of the statutorily prescribed penalty does not affect the outcome of this matter and is, therefore, of no consequence. Accordingly, the Department's exception is accepted, and the challenged language is rejected. This modification of Paragraph 36 is as or more reasonable than retaining the rejected language.

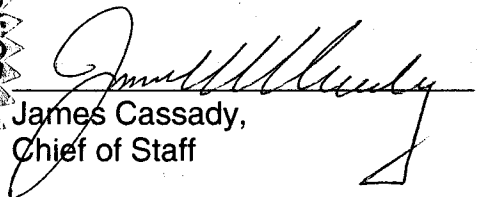
IT IS THEREFORE ORDERED that, except as modified above, the ALJ's Findings of Fact and Conclusions of Law are adopted as the Department's Findings of Fact and Conclusions of Law, and

IT IS ALSO ORDERED that Versa-Tile and Marble, Inc., shall pay the sum of \$12, 683.35 to the Department within thirty days from the date hereof, and that the Order of Penalty Assessment and the Stop Work Order entered by the Division of Workers' Compensation are affirmed, and that Versa-Tile and Marble, 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

by securing the necessary workers' compensation coverage for covered employees and, pursuant to Section 440.107(7)(a), Florida Statutes, paying the civil penalty imposed herein.

DONE AND ORDERED this 25th day of March 2008.




James Cassady,
Chief of Staff

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 Rule 9.110, Fla. R. App. P. 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, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

Copies to:

Michael J. Rudicell
Kristian E. Dunn