

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

S.A.C., LLC, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 07-3948  
 )  
 DEPARTMENT OF FINANCIAL )  
 SERVICES, DIVISION OF WORKERS' )  
 COMPENSATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 25, 2008, in Sarasota, Florida, before Administrative Law Judge Carolyn S. Holifield of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Thomas H. Duffy, Esquire  
Department of Financial Services  
200 East Gaines Street, 6th Floor  
Tallahassee, Florida 32399

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent, Department of Financial Services, Division of Workers' Compensation, properly assessed a penalty of \$90,590.42 against Petitioner, S.A.C., LLC.

PRELIMINARY STATEMENT

On June 20, 2007, Respondent, Department of Financial Services, Division of Workers' Compensation ("Department"), issued a Stop Work Order and Order of Penalty Assessment No. 07-125-D3 ("the Order") directing Petitioner, S.A.C., LLC, ("S.A.C." or "S.A.C., LLC.") to cease business operations and assessed a penalty pursuant to Subsection 440.107(7)(d), Florida Statutes.<sup>1/</sup> The Order did not give a specific penalty assessment amount, but gave the statutory formula for calculating the penalty.<sup>2/</sup> On July 17, 2007, the Department issued Amended Order of Penalty Assessment No. 07-125-D3 ("Amended Order" or "Amended Order of Penalty Assessment"). The Amended Order assessed S.A.C. a penalty of \$90,590.42. S.A.C., through its attorney, challenged the penalty assessment and requested an administrative hearing.

As indicated above, the case was noticed for hearing on January 25, 2008, in an Order Rescheduling Hearing issued December 26, 2007, which was mailed to S.A.C. at its address of record. However, despite a 20-minute delay in convening the hearing, at the time and place designated in the notice, no one appeared on behalf of S.A.C.

At hearing, the Department presented the testimony of Colleen Wharton, an Insurance Analyst II for the Department. The Department's Exhibits 1 through 6 were admitted into

evidence. No testimony or evidence was presented on behalf of S.A.C.

The Transcript of the hearing was filed on February 7, 2008. The Department filed a Proposed Recommended Order which has been considered in preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The Department is the state agency responsible for enforcing the statutory requirement that employers secure payment of workers' compensation for the benefit of their employees pursuant to Section 440.107, Florida Statutes.

2. At all times relevant to this proceeding, Petitioner, S.A.C., LLC, was a corporation domiciled in Florida. S.A.C.'s 2007 Limited Liability Company Annual Report lists its principal place of business as 626 Lafayette Court, Sarasota, Florida, 34236, and its mailing address as Post Office Box 49075, Sarasota, Florida 34230.

3. At all times relevant to this proceeding, William R. Suzor was the president and managing member of S.A.C.

4. Collen Wharton is an Insurance Analyst II with the Department. In this position, Ms. Wharton conducts inspections to ensure that employers are in compliance with the law.

5. On June 20, 2007, Ms. Wharton conducted a compliance check at 2111 South Osprey Avenue in Sarasota, Florida. During the compliance check, Ms. Wharton observed three males working

at that location. The three men were framing a single-family house that was under construction. This type of work is carpentry, which is considered construction.

6. During the compliance check, Ms. Wharton asked David Crawford, one of the men working at the site, who was their employer. Mr. Crawford told Ms. Wharton that he and the other two men worked for S.A.C., but were paid by a leasing company. Mr. Crawford told Ms. Wharton that the company was owned by Mr. Suzor and, in response to Ms. Wharton's inquiry, he gave her Mr. Suzor's telephone number.

7. In addition to Mr. Crawford, the other workers at the site were identified as Terry Jenkins and Frank Orduno.

8. By checking the records the Department maintains in a computerized database, Ms. Wharton determined that S.A.C. did not carry workers' compensation insurance, but had coverage on its employees through Employee Leasing Solutions, an employee leasing company. She also determined, by consulting the Department's database, that none of the men had a workers' compensation exemption.

9. Ms. Wharton telephoned Employee Leasing Solutions, which advised her that two of the workers at the site, Mr. Crawford and Mr. Jenkins, were on the roster of employees that the company maintained. The company advised her that the other worker, Mr. Orduno, was not on its roster of employees.

This information was verified by an employee list that the leasing company provided to Ms. Wharton.

10. On June 20, 2007, after determining that one worker at the work site had no workers' compensation coverage, Ms. Wharton prepared a Stop-Work Order. She then telephoned Mr. Suzor, told him that he had one worker at the site who did not have workers' compensation coverage and requested that he come to the work site. During the conversation, Mr. Suzor advised Ms. Wharton that Mr. Crawford was in charge at the work site, that she could give the Stop-Work Order to Mr. Crawford, and that he (Mr. Suzor) would meet her the following day.

11. Ms. Wharton, after she telephoned Mr. Suzor, she conferred with her supervisor and then issued Stop-Work Order No. 07-125-D3, posting it at the work site and serving it on Mr. Crawford.

12. On June 21, 2007, Mr. Suzor met with Ms. Wharton at her office. During that meeting, Ms. Wharton served a copy of Stop-Work Order No. 07-125-D3 on Mr. Suzor. She also served him with a Request for Production of Business Records for Penalty Assessment Calculation ("Request for Business Records").

13. The Request for Business Records listed specific records that Mr. Suzor/S.A.C. should provide to the Department so that the Department could determine the workers who S.A.C. paid during the period of June 19, 2004, through June 20, 2007.

14. The Request for Business Records notes that the requested records must be produced within five business days of receipt. According to the Request for Business Records, if no records are provided or the records provided are insufficient to enable the Department to determine the payroll for the time period requested for the calculation of the penalty in Subsection 440.107(7)(d), Florida Statutes, "the imputed weekly payroll for each employee, . . . shall be the statewide average weekly wage as defined in section 440.12(2), F.S. multiplied by 1.5."

15. S.A.C. did not respond to the Department's Request for Business Records.

16. On July 17, 2007, the Department had received no records from S.A.C. Without any records, Ms. Wharton had no information from which she could determine an accurate assessment of S.A.C.'s payroll for the previous three years. Therefore, Ms. Wharton calculated the penalty based on an imputed payroll.

17. In her calculations, Ms. Wharton assumed that Mr. Orduno worked from June 21, 2004, through June 20, 2007, and that he was paid 1.5 times the state-wide average weekly wage for the class code assigned to the work he performed for each year or portion of the year. The Department then applied the statutory formula set out in Subsection 440.107(7)(d), Florida

Statutes. Based on that calculation, the Department correctly calculated S.A.C.'s penalty assessment as \$90,590.42, as specified in the Amended Order of Penalty Assessment dated July 17, 2007.

18. The Amended Order of Penalty Assessment reflecting the correct penalty amount was served on S.A.C.'s attorney, John Myers, Esquire, by hand-delivery, on July 17, 2007.<sup>3/</sup>

19. On July 21, 2007, S.A.C., through its former counsel, filed a Petition for Hearing.

#### CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

21. Administrative fines are penal in nature. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern, Inc., 670 So. 2d 932 (Fla. 1996). Therefore, the Department bears the burden of proof herein by clear and convincing evidence.

22. Subsection 440.10(1), Florida Statutes, requires every employer coming within the provisions of Chapter 440, Florida Statutes, to secure coverage under that chapter.

23. An "employer" is defined as "every person carrying on employment. . . ." An "employee" is defined as "any person who

receives remuneration from an employer for the performance of any work or service while engaged in any employment."

§§ 440.02(15) and (16), Fla. Stat.

24. Section 440.107, Florida Statutes, authorizes the Department to issue Stop-Work Orders and Penalty Assessment Orders in its enforcement of workers' compensation coverage requirements and reads, in pertinent part:

(2) For purposes of this section, "securing the payment of workers' compensation" means obtaining coverage that meets the requirements of this chapter and the Florida Insurance Code. . . .

\* \* \*

(7)(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.

\* \* \*

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the



statewide average weekly wage as defined in s. 440.12(2) multiplied by 1.5.

25. Florida Administrative Code Rule 69L-6.028 reads, in pertinent part:

(1) In the event an employer fails to provide business records sufficient for the department to determine the employer's payroll for the period requested for the calculation of the penalty pursuant to Section 440.107(7)(e), F.S., the department shall impute payroll at any time after the expiration of fifteen business days after receipt by the employer of a written request to produce such business records.

(2) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for purposes of calculating the penalty provided for in Section 440.107(7)(d), F.S., the imputed weekly payroll for each employee, corporate officer, sole proprietor or partner for the portion of the period of the employer's non-compliance occurring on or after October 1, 2003, shall be calculated as follows:

(a) For . . . each employee identified by the department as an employee of such employer at any time during the period of the employer's non-compliance, the imputed weekly payroll for each week of the employer's non-compliance for each such employee shall be the statewide average weekly wage . . . that is in effect at the time the stop work order was issued to the employer, multiplied by 1.5. Employees include sole proprietors and partners in a partnership.

\* \* \*

(c) If a portion of the period of non-compliance includes a partial week of non-compliance, the imputed weekly payroll for such partial week of non-compliance shall be prorated from the imputed weekly payroll for a full week.

26. Section 468.520, Florida Statutes, reads, in pertinent part, as follows:

(4) "Employee leasing" means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client. . . .

(5) "Employee leasing company" means a sole proprietorship, partnership, corporation, or other form of business entity engaged in employee leasing.

(6) "Client company" means a person or entity which contracts with an employee leasing company and is provided employees pursuant to that contract.

27. At all times relevant hereto, Petitioner was an employer engaged in the construction industry which was not in compliance with the requirements of Chapter 440, Florida Statutes, of securing workers' compensation insurance for all of its employees.

28. S.A.C. was a client company of an employee leasing company, Employee Leasing Solutions. Only the employees leased from Employee Leasing Solutions were covered under Employee Leasing Solutions' workers' compensation coverage. One of

S.A.C.'s three workers performing construction work at a job site on June 20, 2007, was not covered under Employee Leasing Solutions' workers' compensation coverage.

29. The Department properly applied the statutorily prescribed guidelines and arrived at the correct penalty assessment of \$90,590.42.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent, Department of Financial Services, Division of Workers' Compensation, enter a final order which affirms the Amended Order of Penalty Assessment issued July 17, 2007, assessing a penalty of \$90,590.42, and the Stop-Work Order issued to Petitioner, S.A.C., LLC, on June 20, 2007.

DONE AND ENTERED this 25th day of March, 2008, in Tallahassee, Leon County, Florida.

*Carolyn S. Holifield*

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Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of March, 2008.

ENDNOTES

1/ All references are to 2007 Florida Statutes, unless otherwise indicated.

2/ The Order stated, "[a] penalty against the Employer is hereby Ordered in an Amount: 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 payment of workers' compensation, required by this chapter within the preceding 3-year period, or \$1,000, whichever is greater. Section 440.107(7(d)). . . . The penalty may be amended until a Final Order . . . is issued."

3/ The Department's initial contact was with Mr. Suzor. However, it was Mr. Myers who submitted a Petition for Hearing. Pursuant to an Order issued November 14, 2007, Mr. Myers was allowed to withdraw from the case.

COPIES FURNISHED:

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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.