STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTHERN GEAR COMPANY OF FLORIDA, INC.,	)	
Petitioners,	)	
vs.	)	Case No. 07-4547
DEPARTMENT OF TRANSPORTATION,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice this cause came on for formal proceeding and hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings. The hearing was conducted in Tallahassee, Florida, on February 22, 2008. The appearances were as follows:

APPEARANCES

For Petitioner: Garvin B. Bowden, Esquire
Gardner, Wadsworth, Duggar, Bist & Wiener, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308

For Respondent: Kimberly Clark Menchion, Esquire
Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0450

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether reimbursement should be paid to the Petitioner for storage expenses for personal property, under the Florida

Uniform Relocation Assistance Program and, if so, the amount of such reimbursement.

PRELIMINARY STATEMENT

This cause arose when the Petitioner was informed by the Department of Transportation, (Department) the Respondent, by letter of August 27, 2007, that it would not pay the Petitioner's claim for storage expenses, based upon an alleged lack of proper documentation to support the claim. The denial letter acknowledged that the Petitioner had submitted copies of checks and other documentation for storage expenses, written on the Petitioner corporation's bank account, payable to Kenneth Farmer and the Petitioner, but the letter stated that such documentation, showing apparent payments from an entity to itself, would not qualify as proof of reimbursement under the relevant state and federal regulations.

Upon receipt of the denial letter the Petitioner timely requested a formal proceeding and hearing to contest this determination. In the Petition, the Petitioner claimed that it was not paying itself for such storage fees, but that the payments were a bonafide payment from the Petitioner corporation to Kenneth Farmer as landlord and owner of the property and warehouse where the storage was made. The Petitioner is claiming reimbursement for storage fees from October 2006 through September 2007 in the amount of $15,000.00 per month as

well as for reimbursement for storage fees paid beyond that normal 12 month storage period.

The cause was transmitted to the Division of Administrative Hearings, and ultimately to the undersigned Administrative Law Judge, for formal proceeding and hearing. The hearing was set for February 22, 2008, and conducted on that day. During the formal hearing, the Petitioner presented the testimony of Kenneth Farmer and Durwood Pearce, as well as offering 18 exhibits which were admitted into evidence, (Petitioner's Exhibits A-R). The Respondent presented the testimony of Robert Knight and Steve Carlton and offered six exhibits into evidence, all of which were admitted.

Upon conclusion of the proceeding the parties elected to have it transcribed and to submit proposed recommended orders. Proposed Recommended Orders were timely submitted March 17, 2008, and have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner, at times pertinent hereto, was and is a Florida corporation. Its principal place of business at the outset of the factual events related to this dispute was at 4907 Carder Road, Orlando, Florida. The Petitioner at that location was in the business of rebuilding automobile transmissions and transfer cases, using and storing substantial amounts of

machined gears and gear sets and other related parts and materials necessary to that commercial operation. The Petitioner leased a portion of that Orlando property at that address (Orlando property) from Mr. Kenneth Farmer who is a shareholder of the Petitioner corporation and who also owned, as fee simple owner, the Orlando property (individually).

2. The Respondent is an Agency of the State of Florida charged with administering the Florida Uniform Relocation Assistance Program, which is a program designed to reimburse certain expenses to persons or entities who are, or have been, property owners of businesses subject to Department of Transportation condemnation proceedings. It assists them with required expenses, necessitated by relocation of businesses or residences. See §§ 339.09(2)(3) and 421.55, Fla. Stat. and Fla. Admin. Code R. 14-66.007.

3. The Orlando property involved in the facts of this case, became subject to a condemnation proceeding initiated by the Department. The Petitioner leased a portion of that property from Mr. Farmer, its shareholder, which is where it conducted its commercial business, referenced above. Mr. Farmer rented the balance of the Orlando property to various other commercial tenants who also paid rent to Mr. Farmer, as did the Petitioner corporation.

4. The Department's agent, Steve Carlton, by letter of July 19, 2005, notified Mr. Farmer as the property owner, of the Department's intent to acquire the Orlando property. The Department also informed the Petitioner corporation that funds were available to the Petitioner under the Florida Uniform Relocation Assistance Program for relocation-related expenses (which include storage) caused by the consummation of the condemnation proceeding. That written notification listed the reimbursable expenses the Petitioner might be eligible to recover under that program, and stated that expenses for the storage of personal property for up to 12 months are usually reimbursable.

5. Through the eminent domain efforts, the Department and the owner, Mr. Farmer, ultimately resolved the condemnation action, with regard to the Orlando property, as a full taking of that property, rather than a partial taking. Such a full taking required removal of all the tenants, including the Petitioner corporation, by September 30, 2006. The Petitioner's only option to recover damages caused by the relocation and storage of personal property related to its business, was through the Florida Uniform Relocation Assistance Program.

6. Due to the nature of its business, the Petitioner possessed a large amount of equipment including forklifts, cleaning machines, work benches, and presses, as well as a very

large amount of inventory. Because of financial limitations and the lack of a viable replacement location for the business, the Petitioner was unable to relocate its business in the Orlando area and was required to place all inventory and equipment into storage. The storage effort required the transportation of the inventory and equipment, in the amount of approximately 57 tractor-trailer loads. This was necessary to transport the inventory and equipment to a location at 1730 Bankhead Highway, in Carrolton, Georgia. This Carrolton property was also owned by Mr. Farmer.

7. Mr. Farmer had purchased the Carrolton property to hold for rental income and investment purposes in December of 2004. The Carrolton property consists of approximately two acres with a 15,000 square foot building and a 10,000 foot building. Prior to the Petitioner's inventory and equipment being transported to the Carrolton property, that property was occupied by two other commercial tenants. One of those commercial tenants had to be removed by Mr. Farmer, the landlord, in order to make space for storage of the Petitioner's inventory and equipment. Once that inventory and equipment was moved to the Carrolton property, in October of 2006, the inventory and equipment occupied approximately 80 percent of the space on the property. Through the date of the formal hearing the inventory and equipment remained stored on the Carrolton property.

8. The Petitioner paid storage fees to Mr. Farmer for the year 2006 in the amount of $45,000.00. That was at the rate of $15,000.00 per month for October through December of 2006. The $15,000.00 per month figure is undisputed as being a reasonable storage fee amount. Mr. Farmer paid both the state and federal income taxes on that amount of rental income. The Petitioner paid the storage fees to Mr. Farmer in the total amount of $180,000.00, at that monthly rate, for the period of January through December 2007. Although the checks for the monthly payments of the storage fees were payable to both the Petitioner and Mr. Farmer, Mr. Farmer and Mr. Pearce's un-refuted testimony shows that the net proceeds from those storage fees were ultimately paid over to Mr. Farmer for his personal use. Those monthly payments were written on a checking account identified by Mr. Pearce as the Petitioner's "operating account." As the checks were written from the Petitioner's operating account they were deposited into what Mr. Farmer and Mr. Pearce identified as the "rental account." Mr. Pearce is an accountant and an Internal Revenue Service "enrolled agent." He has provided accounting services for the Petitioner's companies since their inception in 1995. He is also Mr. Farmer's personal accountant.

9. Although the rental account was created in the corporate name of the Petitioner, the un-refuted evidence at hearing shows that the rental account was set up in that fashion

at the request of Mr. Farmer's mortgage lender and the account was utilized solely to accumulate rental income from the Petitioner and the other tenants that had previously occupied the Orlando property. As the funds accumulated in the rental account, Mr. Farmer would withdraw the net accumulated rental payments for his personal use, as he did through those three checks entered into evidence as Petitioner's Exhibit One. In essence, the rental account was treated as a personal account of Mr. Farmer's for the purpose of collecting rent from the tenants at the Orlando property, including the Petitioner. When the Petitioner relocated its inventory and equipment to the Carrolton property and started paying storage expenses to Mr. Farmer, instead of operating rent, the same procedure was followed and that account was used to collect the storage fee payments from the Petitioner.

10. The testimony of Mr. Pearce establishes the situation related to the 2006 federal tax returns for both Mr. Farmer and the Petitioner. Clearly the Petitioner claimed, as a deductible expense, the $45,000.00 in storage fees it paid to Mr. Farmer in 2006. Mr. Farmer and his wife correspondingly claimed that $45,000.00 as rental income in 2006 and paid state and federal income tax on that income, as reported on their 2006 federal tax return. The testimony of Mr. Farmer and Mr. Pearce establishes that the $180,000.00 in storage fees paid in 2007 would be

treated in the same manner on both the Petitioner's and Mr. Farmer's 2007 income tax returns. Mr. Knight, testifying for the Department, conceded that it would be unreasonable for Mr. Farmer to pay income tax on storage fees or rental income, if he did not actually receive it from the Petitioner.

11. Copies of checks from the Petitioner, copies of checks to Mr. Farmer, the 2006 income tax return of the Petitioner, and the 2006 return of Mr. Farmer's, and a deed establishing Mr. Farmer's ownership of the Carrolton property, were all admitted into evidence. Additionally, a ledger for 2006 storage fees paid by the Petitioner, a ledger for 2007 storage fees paid by the Petitioner, as well as copies of bank statements for the Petitioner's operating accounts, and bank statements for the rental account, as well as copies of receipts covering storage fees from October 2006 through December 2007, were admitted into evidence. Those receipts were prepared at the Department's request and are consistent with the figures and the other documents offered into evidence by the Petitioner.

12. The preponderant weight of the persuasive evidence establishes that the Petitioner paid storage fees to Mr. Farmer for the 12-month period beginning October 2006 through September 2007. This totaled $180,000.00. The Petitioner also paid such storage fees to Mr. Farmer for the period of October, November, and December of 2007, for an additional $45,000.00 dollars.

Thus, through the date of hearing, the Petitioner had paid Mr. Farmer a total of $225,000.00 in storage fees. The Petitioner also maintains that the storage fee for the first three months of 2008 will come due in March of 2008 for another $45,000.00 dollars of storage fees due. Thus, beyond the $180,000.00 in storage fees paid for the first year of storage, the Petitioner incurred an obligation of an additional $90,000.00 to pay Mr. Farmer in storage fees.

13. The Petitioner was informed by the Department that the Petitioner would have to incur the storage expenses and later apply for reimbursement from the Department. In other words, the Petitioner would incur the financial burden of storing its inventory and equipment in the hopes that the Department would reimburse the Petitioner later for such expenses. Advance payments were discussed with the Department's Agent, Steve Carlton, but no advance payments were ever remitted to the Petitioner.

14. Due to the forced relocation and storage of the inventory and property, the Petitioner maintains that it has not been able to operate its business and has not been able to produce income since September of 2006. Without income or necessary capital to place its inventory and equipment back into production, the Petitioner has had to maintain the property in

storage and incur the expenses, which the Petitioner maintains was beyond its control.

15. The testimony of Mr. Farmer and Mr. Pearce to the effect that the Petitioner actually incurred the storage expenses it now seeks to recover has not been refuted by persuasive evidence by the Respondent. Thus, the Petitioner is entitled to be reimbursed for the storage fees as found and concluded herein.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2007).

17. The Department is authorized to pay funds for "relocation assistance" for persons or business who must relocate due to losing ownership or access to property through the eminent domain procedure conducted by the Department. See §§ 339.09(2) and 421.55(3), Fla. Stat. (2007).

18. The Petitioner bears the burden of proof to establish that it properly incurred the relevant storage and relocation expenses, and that it is due to be reimbursed for those expenses by the Department. See Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

19. Payment of relocation assistance and moving cost to persons displaced by transportation facilities or related

projects, is provided for in Florida Administrative Code Rule 14-66.007, which incorporates by reference 49 Code of Federal Regulation Part 24. As provided in 49 C.F.R. Section 24.301(a)(1), "any owner-occupant or tenant who qualifies as a displaced person . . . who moves from a business . . . is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary." (Emphasis supplied.)

20. The amount of $15,000.00 per month as storage expenses has been stipulated by the parties to be reasonable regarding storage of the inventory, equipment, and personal property of the Petitioner. It has been stipulated to be necessary. Pursuant to that stipulation there is no issue as to whether the expenses were reasonable and necessary and the sole matter in dispute is whether the expenses were actual, in other words, whether the Petitioner actually paid storage fees to Mr. Farmer at the rate of $15,000.00 per month and for how long they were reasonable and necessary.

21. The Department took the position that the Petitioner had failed to provide adequate documentation to prove the actual incurrence of storage expenses. This is a de novo proceeding and the documentation which is determinative, once the de novo proceeding is initiated, is what is provided in the evidence offered by the Petitioner versus that offered by the Department.

The evidence submitted, upon which the above Findings of Fact are based, shows that the storage expenses were incurred at the rate of $15,000.00 per month, from October 2006 forward. The manner of payment did not clearly show this to be the case during the free form stage of this dispute and it was reasonable for the Department to make an initial determination that adequate evidence of payment of the fees had not been made. The explanation provided at hearing, however, through the testimony of Mr. Pearce, Mr. Farmer, as well as the documentary evidence referenced above, shows that a bonafide payment arrangement between the Petitioner corporation and Mr. Farmer was made, and the $15,000.00 per month storage fees indeed were paid to Mr. Farmer in a bonafide, "arm's length" transaction. That evidence was unrefuted and it established that the Petitioner paid the storage fees to Mr. Farmer.

22. The requirement for documentation to support a claim for reimbursement for such relocation/storage expenses is set forth in 49 C.F.R. Section 24.207(a). That subsection provides as follows:

> (a) Documentation. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

23. The Petitioner has met the standard by submitting copies of relevant checks from the Petitioner, copies of checks to Mr. Farmer, the income tax returns of the Petitioner as well as Mr. Farmer, Mr. Farmer's deed to the Carrolton, Georgia, property, and the ledgers referenced in the above findings of fact. The Petitioner has also placed in evidence copies of the bank statements from the two bank accounts involved, and the receipts from Mr. Farmer covering the period of storage from October 2006 through December 2007. This documentary evidence together with Mr. Farmer's and Mr. Pearce's testimony, which is accepted, shows the storage fees were paid for the period including and between those two dates.

24. The evidence shows that relevant checks were deposited in the rental account and that the rental account was treated as a personal account by Mr. Farmer for accumulation of rental income. The evidence shows that Mr. Farmer and his wife paid federal income tax on the amount of storage fees as rental income for the year 2006 and the unrefuted testimony shows that such would be the treatment of it for the year 2007, as to the 2007 tax return of Mr. Farmer and his wife. Similarly, the tax return for the Petitioner for 2006 shows that the storage fees paid to Mr. Farmer were expensed for tax purposes by the Petitioner corporation, and that such treatment would be accorded for the Petitioner's 2007 tax return. Again, the

preponderant evidence has established that the checks paid to Mr. Farmer as rental income were for the storage fees and were paid by the Petitioner corporation.

25. The Department's own witness and State Relocation Administrator, Mr. Robert Knight, conceded that, if a displaced business stores inventory on property owned by a shareholder of the displaced company, that the company would be entitled to storage expenses, so long as the company actually incurred those expenses. This is the case with the Petitioner and Mr. Farmer. The storage fees were actually incurred by the Petitioner, were paid to Mr. Farmer and are properly reimbursable by the Department through the referenced program.

26. The Petitioner established at the hearing that it had paid the storage fees for the 12-month period beginning October 2006 through September 2007 for a total of $180,000.00. The Petitioner also established that it had paid for the period October through December of 2007 and was contractually obligated to pay the fee through March 2008.

27. As concluded above, there is no dispute as to the reasonableness and the necessity of the storage fees or expenses the Petitioner has been obligated to pay, as to monthly amount and as to the twelve month period. In the "free-form" stage of this proceeding, however, the Department took the position that the Petitioner had not adequately documented the actual payment

of storage expenses and the necessity for it, with which position the Petitioner obviously differed. The Petitioner availed itself of its right to a formal proceeding, which engendered the subject dispute and proceeding. The matter was not unduly delayed because the case was filed before the undersigned in October of 2007, and proceeded to hearing approximately three months thereafter. Neither party is blameworthy for any inordinate delay once the proceeding before the Division of Administrative Hearings was initiated.

28. Although the Petitioner contended in its request for hearing that the Agency had been negligent in failing to abide by a February 14, 2006, settlement agreement, thus causing the necessity to extend the period requested for storage reimbursement, the Petitioner has not adduced persuasive evidence that a settlement agreement was violated by the Department to the extent that the Department is solely at fault in any delay since that time in the provision of storage expense funds to the Petitioner. The evidence indicates that the Department had a good faith basis for its belief that inadequate documentation for proof of payment of the storage fees had been provided it in the free-form stage of the dispute. The Petitioner had a good faith basis for its belief that indeed it was entitled to the payment of such funds representing storage expenses and that it had provided a sufficient documentary basis

to prove it to the satisfaction of the Department. Consequently, the dispute arising in this proceeding was based on a good faith difference of opinion and view of the facts concerning the issue of storage expenses between the parties.

29. Accordingly, the Petitioner having shown, and their being no dispute, that the monthly amount of the storage expenses and the necessity for them was reasonable, the evidence shows that some additional reasonable, brief delay beyond the relevant 12-month period, ending in September 2007, was inevitably occasioned by the filing and litigating of the formal proceeding and is also necessary and reasonable. Indeed, the Petitioner had already paid the expenses through December 31, 2007.

30. Such storage expenses obviously cannot be incurred indefinitely, even though the Petitioner may not, as a matter of fact, have the capital or credit available in order to re-institute its transmission repair business for some period of time after the hearing, or after March 2008, the month through which it claims expenses. Based upon the totality of the persuasive evidence, however, it is established that it is reasonable and necessary for the expenses to be reimbursed beyond the initial 12-month period referenced in the above legal authority. They should be reimbursed through and including the date of the subject hearing, at which the justification for the

storage expense claim was finally proven.

RECOMMENDATION

Having considered the foregoing Findings of Fact, 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 Florida Department of Transportation reimbursing the Petitioner for the subject storage expenses beginning in October 2006 through February 22, 2008, at the rate $15,000.00 per month and on a pro rata daily basis for the partial month of February 2008, at the daily rate of $535.72, for a total of $251,785.84.

DONE AND ENTERED this 21st day of May, 2008, in Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with Clerk of the
Division of Administrative Hearings
this 21st day of May, 2008.

COPIES FURNISHED:

Garvin B. Bowden, Esquire
Gardner, Wadsworth, Duggar, Bist
& Wiener, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308

Kimberly Clark Menchion, Esquire
Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0450

James C. Myers
Clerk of Agency Proceedings
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0450

Stephanie Kopelousos, Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 57
Tallahassee, Florida 32399-0450

Alexis M. Yarbrough, General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0450

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.