



REPRESENTING
ALEX SINK
 CHIEF FINANCIAL OFFICER
 STATE OF FLORIDA

FILED

AUG 08 2008

Chief Financial Officer
 Docketed by: *[Signature]*

IN THE MATTER OF:

Extraordinaire Home Improvements, Inc.

Case No. 92391-07-WC

FILED
 2008 AUG 14 A 10:51
 DIVISION OF
 ADMINISTRATIVE
 HEARINGS

FINAL ORDER

This cause came on for consideration of and final agency action on the Recommended Order submitted on June 27, 2008 by Administrative Law Judge Barbara J. Staros pursuant to a formal hearing conducted under the authority of and pursuant to Section 120.57(1), Fla. Stat., on May 1, 2008. The Department of Financial Services, Division of Workers' Compensation (the Department) timely filed exceptions to the Recommended Order. No exceptions were filed by Extraordinaire Home Improvements, Inc. (Extraordinaire). The Recommended Order, the exceptions thereto, the testimony and documents entered into evidence, and applicable law were all considered during the promulgation of this Final Order.

RULING ON THE DEPARTMENT'S EXCEPTIONS

The Department takes exception to Conclusion of Law 20 wherein the ALJ stated:

While Mr. Sakakini's use of Extraordinaire Homes' business account to pay the workers gave the appearance that the workers worked in a capacity of an employee of the construction company, the facts established in this de novo hearing support the conclusion that the work performed on Mr. Sakini's personal residence does not come within the relevant definitions found in Subsection 440.02(8), and (16), Florida

Statutes. Accordingly, the amount of the penalty imposed should be reduced to \$75,000.00.

Subsection 440.02(8), Fla. Stat., defines the term "Construction industry"

as follows:

"Construction industry" means for-profit activities involving any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. However, "construction" does not mean a homeowner's act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold, resold, or leased by the owner within one year after the commencement of construction.

The ALJ's Conclusion of Law posits that Mr. Sakakini (Extraordinaire's owner and the owner of the home in question) was operating as a homeowner at the relevant times, and therefore the work being performed on his residence was not within the statutory definition of "construction industry" work, thereby exempting that activity from the workers' compensation statutes coverage requirements. The Department's exception posits that the evidence shows that the work being performed on Mr. Sakakini's residence was being performed through his corporation (Extraordinaire) and by corporate employees being paid from the corporate bank account. Thus, Mr. Sakakini was not operating exclusively as an individual homeowner but also through his company as a contractor, and thus Extraordinaire violated the workers' compensation statutes coverage requirements.

In Finding of Fact No. 13, the ALJ found that the workers engaged in work on or around the personal residence of Mr. Sakakini at the times in question were being paid from the corporate account, not from Mr. Sakakini's personal account. That Finding of Fact does seem to support the Department's exception, as does Mr. Sakakini's own deposition testimony that *his company* was doing work on his home. (Depo. Tr. 21).

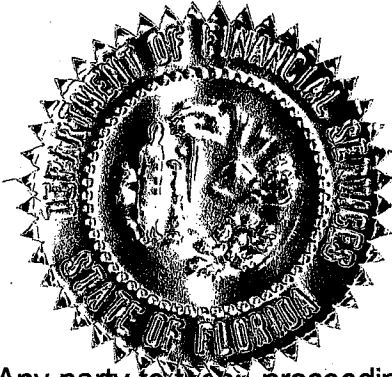
However, an examination of the entire record fails to reveal any evidence that the work on Mr. Sakakini's residence was being performed *for profit*, an element of the statutory definition of "Construction industry". Indeed, the record shows consistent testimony that Mr. Sakakini was having that work performed simply to provide an income to the workers during a lull in Extraordinaire's work, and that Extraordinaire actually lost \$30,000 in 2007, a significant portion of the time here in question. There is no showing in the record that the work performed on Mr. Sakakini's residence was either intended to result or actually resulted in a profit to either Extraordinaire or Mr. Sakakini. Absent such a showing, the work performed on Mr. Sakakini's residence falls outside the statutory definition of "Construction industry", and the workers thus outside the statutory coverage requirements for "Construction industry" workers. Accordingly, the Department's exception, while otherwise well-taken, is rejected.

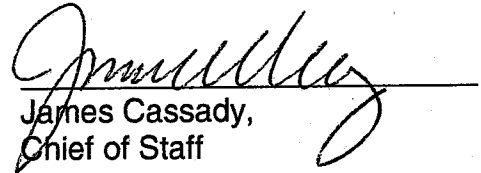
Accordingly, IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law, stated in the Recommended Order, are adopted as the Department's Findings of Fact and Conclusions of Law, and

IT IS HEREBY FURTHER ORDERED that the Second Amended Order of Penalty Assessment in the amount of \$75,000.00 and the Reinstated Stop-Work Order entered by the Division of Workers' Compensation is affirmed, and that Extraordinaire 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 insurance coverage for covered employees and, pursuant to Section 440.107(7)(a), Florida Statutes, paying the civil penalty imposed herein.

DONE AND ORDERED this 8 day of August, 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:

Mark K. Eckels, Esq.
Boyd & Jenerette, P.A.
201 North Hogans Street, Suite 400
Jacksonville, Florida 32202

Colin Roopnarine, Esq.
Department of Financial Services
Division of Workers' Compensation
200 East Gaines Street
Tallahassee, Florida 32399

Barbara J. Staros
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399