

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EXTRAORDINAIRE HOME )  
IMPROVEMENTS, INC. )  
 )  
Petitioner, )  
 )  
vs. )  
 ) Case No. 07-4903  
DEPARTMENT OF FINANCIAL )  
SERVICES, DIVISION OF )  
WORKERS' COMPENSATION, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A hearing was held pursuant to notice, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings, on May 1, 2008, via video-teleconference in Jacksonville and Tallahassee, Florida.

APPEARANCES

For Petitioner: Mark K. Eckels, Esquire  
Boyd & Jenerette, P.A.  
201 North Hogan Street, Suite 400  
Jacksonville, Florida 32202

For Respondent: Colin M. Roopnarine, Esquire  
Department of Financial Services  
Division of Workers' Compensation  
200 East Gaines Street  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue is whether the Department of Financial Services properly assessed a penalty on Petitioner for working in violation of a reinstated Stop-Work Order.

PRELIMINARY STATEMENT

On October 20, 2004, Respondent, Department of Financial Services, Division of Workers' Compensation (Division), issued a Stop-Work Order and Order of Penalty Assessment to Petitioner, Extraordinaire Home Improvements, Inc. On October 29, 2004, the Division issued an Amended Order of Penalty Assessment in the amount of \$8,079.29. On the same date, the parties entered into a Payment Agreement Schedule for Periodic Payment of Penalty, and the Division issued an Order of Conditional Release.

Petitioner did not remit the payments, and on July 27, 2006, the Division issued an Order Reinstating Stop-Work Order for non-payment of the periodic payment agreement.

On September 28, 2007, the Division issued an Order Assessing Penalty for working in violation of the reinstated Stop-Work Order and assessed a penalty of \$406,000.00. Petitioner contested this and timely requested an administrative hearing. The matter was forwarded to the Division of Administrative Hearings on or about October 26, 2007.

A Notice of Hearing was issued scheduling the hearing for January 24, 2008. A motion for continuance was granted. On

April 18, 2008, the Division filed an unopposed Motion to Amend Order of Penalty Assessment. The Motion to Amend Order of Penalty Assessment sought to reduce the Order of Penalty Assessment to \$100,000.00. The motion was granted, and the Second Amended Order of Penalty Assessment was the subject of the final hearing in this case. The hearing was ultimately conducted on May 1, 2008.

At hearing, Petitioner presented the testimony of Khalil "Charlie" Sakakini. Respondent presented the testimony of Tasha Carter and Mr. Sakakini. Respondent offered Exhibits lettered A through H, which were admitted into evidence. A one-volume Transcript was filed on May 15, 2008. Proposed recommended orders were due to be filed on May 27, 2008. The Division timely filed a Proposed Recommended Order. On May 29, 2008, counsel for Petitioner requested an extension of time to file Petitioner's proposed recommended order. Based upon the representations made in that request, the request is granted. The parties' Proposed Recommended Orders have been considered in the preparation of this Recommended Order.<sup>1/</sup>

References to statutes are to Florida Statutes (2007) unless otherwise noted.

#### FINDINGS OF FACT

1. The Division is charged with the regulation of workers' compensation insurance in the State of Florida.

2. Petitioner, Extraordinaire Home Improvements, Inc. (Extraordinaire Homes), is a corporation located in Jacksonville, Florida, and is engaged in the business of building construction, primarily roofing. Charlie Sakakini is the owner of Extraordinaire Homes.

3. On October 20, 2004, the Division issued a Stop-Work Order and Order of Penalty Assessment.

4. On October 29, 2004, the Department issued an Amended Order of Penalty Assessment to Petitioner in the amount of \$8,079.29.

5. Also on October 29, 2004, the parties entered into a Payment Agreement Schedule for Periodic Payment of Penalty wherein Mr. Sakakini agreed to remit monthly payments on behalf of Extraordinaire Homes to the Division in the amount of \$589.95 for 11 months. The payment schedule informed Petitioner that failure to comply with the terms of the agreement would result in the immediate reinstatement of the Stop-Work Order.

6. The Division issued an Order of Conditional Release from Stop-Work Order the same day the agreement was signed.

7. Petitioner, through its owner, Mr. Sakakini, failed to make the payments required by the agreed payment schedule.

8. Accordingly, the Division issued an Order Reinstating Stop-Work Order (Reinstatement Order) on July 27, 2006. The Reinstatement Order informed Petitioner that it must cease all

business operations in the State of Florida until an order releasing the Reinstatement Order was issued.

9. Mr. Sakakini acknowledges that Petitioner was actively conducting business operations, i.e., roofing work, on 100 days in the Fall of 2007, despite the Reinstatement Order having been issued.

10. On September 28, 2007, the Division issued an Order Assessing Penalty for Working in Violation of Reinstated Stop-Work Order assessing a penalty of \$406,000.00.

11. The amount of the assessed penalty was reduced to \$100,000.00 in a Second Amended Order of Penalty Assessment as a result of an Order Granting Motion to Amend Order of Penalty Assessment entered by the undersigned on April 28, 2008.

12. Of the 100 days worked during the pendency of the Reinstatement Order, 25 of those days involved work on Mr. Sakikini's personal residence. During this time, business was slow, and he was trying to give his workers "something to do so that they can make some money." Mr. Sakikini continues to live in the home where this work took place.

13. Mr. Sakikini paid the workers who worked on his personal residence with checks from the business account of Extraordinaire Homes.

14. Mr. Sakikini considers the amount of the penalty, i.e., \$1,000.00 per day of violation, to be excessively harsh when applied to a small businessman like himself.

CONCLUSIONS OF LAW

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

16. 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 Division bears the burden of proof herein by clear and convincing evidence.

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

18. Section 440.02, Florida Statutes, reads in pertinent part as follows:

440.02. Definitions.--

(8) "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 1 year after the commencement of construction. . . .

\* \* \*

(16)(b) A homeowner shall not be considered the employer of persons hired by the homeowner to carry out construction on the homeowner's own premises if those premises are not intended for immediate lease, sale, or resale.

19. Section 440.107, Florida Statutes, authorizes the Division to issue stop-work orders and penalty assessment orders in its enforcement of workers' compensation coverage requirements, and reads in pertinent part:

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter . . . , such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. . . . The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. . . .

\* \* \*

(c) The department shall assess a penalty of \$1,000 per day against an employer for each day that the employer conducts business operations that are in violation of a stop-work order.

20. The Division has proved clearly and convincingly that Petitioner engaged in construction work in violation of the Reinstatement Order. 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. Sakikini'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.

21. As for Mr. Sakikini's belief that a \$1,000.00 per day fine is excessive, it is not within the authority of the undersigned to change the amount of a statutorily created fine.

#### RECOMMENDATION

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

RECOMMENDED that Respondent, Department of Financial Services, Division of Workers' Compensation, enter a final order amending the Second Amended Order of Penalty Assessment, assigning a penalty of \$75,000.00.



DONE AND ENTERED this 27th day of June, 2008, in  
Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of June, 2008.

ENDNOTE

<sup>1/</sup> When filing Petitioner's Proposed Recommended Order, counsel for Petitioner made reference in a cover letter to alternative proposed orders being submitted at my request. No such request was made.

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.