

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES T. QUINN, d/b/a JAMES)
QUINN HANDYMANN,)
)
Petitioner,)
)
vs.) Case No. 08-2745
)
DEPARTMENT OF FINANCIAL)
SERVICES, DIVISION OF WORKERS')
COMPENSATION,)
)
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, in Jacksonville, Florida. The hearing was conducted on August 13, 2008. The appearances were as follows:

APPEARANCES

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

For Respondent: Thomas H. Duffy, Esquire
Department of Financial Services
200 East Gaines Street, Sixth Floor
Tallahassee, Florida 32399-4229

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Petitioner, in the work of his business or trade, operates within the definition of "construction industry" as that term is defined in Chapter 440, Florida Statutes (2008), and the rules of the Respondent Agency. It therefore must be determined whether the Petitioner was required to secure workers' compensation coverage or suffer the disputed penalty for failure to do so.

PRELIMINARY STATEMENT

This proceeding arose when the Department of Financial Services, Division of Workers' Compensation (Division), based upon its investigation, determined that the above-named Petitioner was required to have workers' compensation coverage with regard to its sole employee, the Petitioner, James T. Quinn. The Petitioner did not have such coverage at the time of the inspection and investigation and therefore, a Stop-Work Order, Order of Penalty Assessment, and Amended Order of Penalty Assessment were issued by the Respondent Agency. The Division thus seeks to assess a penalty in the amount of \$34,003.03 through the Amended Order of Penalty Assessment issued on May 8, 2008.

The Petitioner contested that initial decision by the Division and filed a Petition for Hearing on May 27, 2008. The

Petitioner contends that he was not performing work or a trade within the "construction industry" and therefore was not required to have workers' compensation coverage for the one employee.

The proceeding was forwarded to the Division of Administrative Hearings and ultimately the undersigned Administrative Law Judge. A Notice of Hearing was thereafter issued scheduling a Final Hearing for August 13, 2008.

The cause came on for hearing as noticed. The Division presented the testimony of its investigator, Michael Robinson. The Division also presented Exhibits one through eight, which were admitted into evidence without objection. The Petitioner presented the testimony of James T. Quinn, the Petitioner's principal. The Petitioner also offered Exhibits one through four, which were admitted into evidence without objection.

Upon concluding the proceeding, the parties requested the opportunity to submit proposed recommended orders and elected to have the matter transcribed. The Proposed Recommended Orders have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Division is an Agency of the State of Florida charged with enforcing the provisions of Chapter 440, Florida Statutes, with regard to the regulation of the workers' compensation insurance system in the State of Florida. It is

charged with inspecting and ensuring that employers in the State of Florida comply with the relevant provisions of Chapter 440, Florida Statutes, and Florida Administrative Code Chapter 69L-6, regulating the circumstances under which employers are required to have workers' compensation insurance coverage.^{1/}

2. The Petitioner is a corporation having its principal place of business in Jacksonville, Florida, under the name "James T. Quinn Handyman." The business of the Petitioner is primarily a "handyman" type business or service in which the Petitioner performs all sorts of home repairs, maintenance, services including pressure washing, cleaning, organizing, minor maintenance duties, and even running errands for homeowners or clients. Because of the nature of his business in which home repair, home maintenance, and associated painting are of a very minor nature, the Petitioner was under the belief that he was not actually involved in the construction business or "construction industry" and did not require workers' compensation coverage. For the same reasons he also believed he was not required to have an exemption on record with regard to workers' compensation coverage. After the imposition of the Stop-Work Order, however, the Petitioner filed for an exemption for workers' compensation coverage with the Division, and on that exemption listed his trades as being home repair, home

maintenance, and then painting and pressuring washing. He was granted the exemption.

3. The Petitioner also attempted to secure workers' compensation insurance subsequent to the entry of the Stop-Work Order. He spoke with a representative of the National Council on Compensation Insurance (NCCI) who advised him that, because of the nature of his business, he fell within the "Scopes Manual" classification code of 9014 which is "maintenance, non-construction." This representative advised him that this was a classification similar to janitorial work. He indicated his belief to the Petitioner that the nature of the Petitioner's business was more like an apartment building superintendent and that he essentially does any task his clients ask him to do.

4. The Petitioner does not do any building of structures. He does not do land clearing, filling, or excavating preparatory to construction of any sort of structure or to alter the appearance of land. None of his work results in substantial improvements to properties. The Petitioner does not hold himself out as a licensed contractor nor is he so licensed. In fact, he avoids doing jobs which require the obtaining of permits related to any construction or other work. He has consistently avoided undertaking jobs involving remodeling of structures, whether residences or otherwise, and indeed has routinely refused to accept jobs constructing outdoor decks,

which require permits. He does no roofing, concrete driveway or sidewalk work, tree trimming, and he does not paint houses nor entire rooms of houses. He has not done roofing work, although he has provided occasional clients with an estimate of what a roof repair should cost so that clients would know what to expect when they contacted a roofing contractor. He does no new construction and only does very minor repair work to existing structures, usually associated with residences.

5. The Division classified the Petitioner as a "painter." This stems from the original inspection by Inspector Michael Robinson, who testified for the Division at the hearing. During that inspection and the conversation the Petitioner had with Mr. Robinson, he advised Mr. Robinson that his work did include painting, at least on that day. He never advised Mr. Robinson or the Division that the majority of his work involved painting, either on that job, or generally as to other jobs.

6. Indeed, some of the work the Petitioner has done, as depicted on Petitioner's Exhibit Three in evidence, does involve painting. He confirmed in his testimony that on the day the Stop-Work Order was imposed by Mr. Robinson that he had engaged in some painting because he had repaired and re-hung shutters on a residence and needed to paint over the repaired area on a shutter.

7. Mr. Robinson, the Inspector for the Division, testified on its behalf, stating that anyone must secure workers' compensation, if engaged in the "construction industry," meaning a trade coming within the ambit of the construction industry. In lieu of securing such coverage, a person who is an officer of a corporation may file a request for exemption from coverage, which the Petitioner, Mr. Quinn, did. Mr. Robinson noted that the "Scopes Manual" is a manual published by the NCCI, used to describe specific trades. The trades described in the manual are given a designation number and an explanation of what each trade consists of under each designation number or code. That manual is relied upon to describe various trades by the insurance industry and also by the Division. In fact, the Division has adopted the Scopes Manual classification codes by rule in Florida Administrative Code Rule 69L-6.021.

8. Mr. Robinson noted that the Petitioner was engaged in painting, in his belief, and because painting is designated as a construction code under Code 5474, he concluded that the Petitioner operated within the definition of a construction trade or the construction industry. He would also designate someone observed repairing or replacing wood in a structure as being within the definition of a member of the construction industry under the classification of carpentry, if that were the case. Mr. Robinson believes that if the Petitioner's work

consisted of mostly odd jobs, involving such things as hanging ceiling fans, cleaning up debris, cleaning out garages, and other odd jobs then such jobs would have various classification codes, most of which would not be within the construction industry. Mr. Robinson explained that if he or other inspectors encountered people working at two different occupations on a job, then they would consider the nature of the job or jobs being done, or work being done, and take the "highest class code for the work they are performing," inasmuch as that method is used for classification of trades or jobs by the insurance industry. He indicated in his testimony that if any part of the work is considered to be construction, then that person is considered to be a member working in the construction industry and must obtain workers' compensation coverage if there are one or more employees employed by the entity involved.

9. The Petitioner, Mr. Quinn, compiled a list of jobs he has performed over several years. While the list may not be exhaustive, it has been shown to be a representative sample of the various tasks the Petitioner has performed over the years. The list was admitted into evidence as Petitioner's Exhibit Three. It reveals that the Petitioner has engaged in a number of job duties for his clients, most of which do not involve painting. The list includes such things as retrieving a boat trailer and a replacing a flat tire on the trailer for a client,

transplanting two boxwood plants, installing a rope hand-rail on a dock, installing an ice maker, organizing a workshop, cleaning a poolroom, filling in dog holes, signing for Federal Express packages, installing a flat screen television, replacing ceiling tile, assembling a swing set, replacing a doorbell button, setting up a child's telescope, replacing a garage door spring, replacing a kitchen faucet, replacing a garbage disposal, repairing a bicycle, installing signs, pressure washing a pool deck, setting up a DVD player, re-arranging furniture, assembling a basket ball hoop, cleaning wood paneling, installing curtains, fixing a leaky faucet, replacing lighting fixtures and lights, repairing two French doors that included filling-in dog scratches and then painting over the marks. This last task is perhaps illustrative of the manner in which painting represents a minor portion of the duties performed by the Petitioner in the typical jobs he performs as a handyman or "odd job" worker. The painting was only incidental to repairing the scratches made by a family dog and simply involving painting over the marks so that the repaired area would properly blend with the other painted portions of the door.

10. When the Petitioner inquired of a representative of NCCI about the need to obtain workers' compensation insurance coverage, the representative advised him that he more closely resembled a Scopes Manual class code 9014. That code 9014 was

admitted into evidence as Petitioner's Exhibit Four. The NCCI representative advised the Petitioner that Code 9014 describes janitorial type services or duties and that the Petitioner's occupation or jobs seemed more appropriate to that endeavor and that thus he did not appear to need workers' compensation insurance coverage.

11. Mr. Robinson the Inspector for the Division, was not familiar with that class code of the Scopes Manual. Code 9014 provides:

Code 9014 is assigned to insureds primarily engaged in providing janitorial services for others. See Codes 9000 and 9001 in Florida. Janitorial Services are defined as keeping and doing cleaning and engaging in various types of maintenance and minor repair work for upkeep of a building. Stated differently, a risk qualifies as a janitorial service if the risk engages exclusively in cleaning a building or performs maintenance or minor repair operations in addition to cleaning a building. These maintenances or minor repair operations may include, but are not limited to, painting, cleaning windows, changing light bulbs, assisting occupants with the placement of furniture, replacing glass panes, clearing drains, and cleaning carpets.

This class code thus includes in its definition the act of painting. Mr. Robinson confirmed in his testimony that this class code is not listed in the list of class codes identified by the Division as those making up the definition of "construction industry." See Fla. Admin. Code R. 69L-6.201.

Thus, not all occupations involving painting have been identified by the Division as being construction trades or come within the definition of "construction industry." If the Petitioner is not a member or participant in the construction industry, then he does not have to have workers' compensation coverage, because he does not have a sufficient number of employees to apply the requirement for coverage as it is imposed by Sub-section 440.02(17)(b)2., Florida Statutes, for non-construction services, trades, or industries.

12. Although the job or profession of "painter" would be within the definition of "construction industry" or would be a construction trade, the persuasive evidence shows the Petitioner is not a painter by trade or profession, nor does he hold himself out as a painter. Merely because some repair jobs include incidental painting, does not render him a painter, thereby causing him to become part of or be engaged in the "construction industry." In fact, there is an at least informally recognized industry or occupation of "handyman" in the Jacksonville vicinity, as recognized by the yellow page listing for "handyman services" in the Jacksonville area telephone directory, an example of which was admitted into evidence as Petitioner's Exhibit One.

13. Even if the Petitioner does not qualify as a "janitorial service" for purposes of the above-referenced code

9014, if one interprets that code to require the necessity of both performing maintenance or minor repairs, in addition to cleaning a building, the fact remains that the persuasive evidence in this case does not demonstrate that the Petitioner was engaged and functioning as a "painter" or member of the painting occupation. He thus was not engaged in the "construction industry." Aside from the issue of engagement in painting as a purported participant in the construction industry, the evidence referenced-above and findings of fact, concerning the actual functions the Petitioner performs in his business, do not persuasively establish that he is engaged in the construction industry, as defined by the Scopes Manual categories and rules referenced above, and relied upon by the Division.

14. The Respondent contends, in advancing its thesis that the Petitioner's essential business is that of a painter in the construction industry, that the Petitioner spent "thousands of dollars" on paint or painting-related materials. In fact, the evidence shows that the Petitioner purchased \$4,228.88 dollars worth of paint or paint-related materials at Brittan's Paint Store, the only place the evidence shows he purchased any paint. It is interesting that the majority of the paint so purchased (\$2,408.68 worth) was used for one apparent job at Lakeshore Baptist Church during the three-year investigatory period,

specifically from June 30, 2007, through March 20, 2008. The bank-related records in evidence show these expenditures for paint attributable to the church and also show two one-hundred dollar checks issued on the Petitioner's account to that church. Further, the evidence in the form of the "spread sheet" or cash flow records for 2007, shows a \$7,120.00 dollar "charitable contribution" for that year, without identifying the recipient.

15. There is no direct evidence showing remuneration to the Petitioner for any work done for the church, painting or otherwise, for 2007 and 2008. That lack of evidence coupled with the evidence that two one-hundred dollar checks were paid to the church by the Petitioner, or the Petitioner's wife, and the fact that a \$7,120.00 dollar charitable contribution was made during that year, raises the possibility that the job may not have been done for profit or remuneration to the Petitioner, and thus that it does not constitute engagement in the construction industry as a for-profit activity. (See § 440.02(8), Fla. Stat.) The point is that it has not been established by persuasive evidence that these paint purchases were made for the primary purpose of engaging in the construction industry as a painter or painting business. The details regarding the use made of this purchased paint and the nature and scope of any work done at the church were not developed on direct or cross-examination. One could just as

easily infer that the painting work for the church was done by the Petitioner as a contribution to the church with which he may have been affiliated as a member, or even as an employee. In any event, it was not clearly and convincingly established that he was engaged in the construction industry with regard to the painting in terms of the use made of these paint purchases from Britton's Paint Store.

16. There were other, more minor purchases of paint from Britton's Paint Store shown in the bank records, which did not indicate how they were used or for which client. Some could have been merely for personal use. Three purchases were for "Dave" and three noted on the memo line on the check were for "dry storage." There were 22 of these "non-church" paint purchases. Only four were for more than \$100.00. This indicates a pattern of mostly small paint material purchases which fits the Petitioner's business as being that of repairman or handyman and not as a professional painter. These purchases were made over a period of almost 14 months.

17. In light of the lack of inquiry of the Petitioner, on direct and cross-examination, about the details of the uses and purposes of these paint material purchases, it was not established by persuasive evidence that these paint purchases were "for-profit," as a painting trade or business, nor that they represent evidence that painting was other than an

incidental activity or minor part of the Petitioner's "handyman" work. The totality of the evidence of his type of work does not show that painting was a major part of it or other than an intermittent activity. It was thus not established that the paint purchases represent engagement in the "construction industry" as a for-profit painting activity.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

19. Pursuant to Sections 440.10 and 440.38, Florida Statutes, employers, as defined in Section 440.02, Florida Statutes, must secure the payment of workers' compensation for employees. All persons receiving remuneration working for an employer are considered employees. § 440.02(15)(b), Fla. Stat. Certain corporate officers can become exempt from coverage requirements of Chapter 440, Florida Statutes, but those in the construction industry must affirmatively make that election and apply for exemption. §§ 440.02(15)(b) and 440.05, Fla. Stat.

20. Section 440.107, Florida Statutes, mandates compliance with the coverage requirements of the workers' compensation law and provides for their enforcement. It provides, in relevant part:

(2) For the 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 . . .

Section 440.107 also sets forth the duties and powers of the Department to enforce compliance with the workers' compensation coverage requirement. Section 440.107(3)(g), authorizes the Department to issue Stop-Work Orders and Penalty Assessment Orders in its enforcement of workers' compensation coverage requirements. In light of the above findings of fact, preponderant, persuasive evidence has not been adduced to establish that the Petitioner was an employer in the construction industry as contended by the Agency. It has thus not been established that a violation of Sections 440.10 and 440.38, Florida Statutes, for the period from April 23, 2005, through April 23, 2008, has occurred.

21. "Employer" is defined as "every person carrying on any employment." § 440.02(16)(a), Fla. Stat. "Employment" in the construction industry includes "all private employment in which one or more employees are employed by the same employer." § 440.02(17)(a)2., Fla. Stat. The employer in this case is the corporation domiciled in Jacksonville known as James T. Quinn, Handyman, Inc.

22. Section 440.02(8), Florida Statutes, defines "construction industry" as "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." Section 440.02(8), provides "[t]he division may, by rule, establish standard industrial classification codes and definitions thereof which meet the criteria of the term 'construction industry' as set forth in this section." In furtherance of this statutory authority the Division of Workers' Compensation has promulgated Florida Administrative Code Rule 69L-6.021, which adopts the definition found in the Scopes Manual. Fla. Admin. Code R. 69L-6.021(2).

23. Florida Administrative Code Rule 69L-6.021(1), lists the workplace operations that fall within the statutory definition of "construction industry" and includes "painting," using the Scopes Manual definition under its classification code 5474. The Scopes Manual definition of classification code 5474 is a general painting classification which "contemplates exterior and interior painting of residential or commercial structures that are constructed of wood, concrete, stone or combination thereof regardless of height." "Surface preparation and other work incidental to the painting process" are also contemplated by this classification code.

24. If Petitioner Quinn was engaged in the construction industry then he would constitute an employer if he had at least one employee. § 440.02(17)(b)2., Fla. Stat. Petitioner Quinn

did have one employee on April 23, 2008, Mr. Quinn, himself. Its payroll records show that the employee did receive remuneration for work performed during a three year investigation period between April 23, 2005 and April 23, 2008. Therefore, if the Petitioner were engaged in the construction industry he would be required to secure the payment of workers' compensation for his employee.

25. Section 440.107(7)(a), Florida Statutes, states in relevant part:

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 to be 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. If the department makes such a determination, the department shall issue a stop-work order within 72 hours.

26. Section 440.107, Florida Statutes, states with regard to assessment of penalties, as follows:

(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 employers payroll during periods for which it failed to secure the

payment of workers' compensation required by this chapter within the preceding three-year period or \$1,000 dollars, whichever is greater.

27. The Department is thus statutorily obligated to use an established formula to calculate penalty. It would be justified in penalizing the Petitioner an amount equal to one and one-half times the workers' compensation premiums it would have evaded during a three year period preceding the commencement of the investigation on April 23, 2008, had the Petitioner been an employer engaged in the construction industry.

28. The methodology for calculating the penalty is mandated by Florida Administrative Code Rule 69L-6.027. It adopts a penalty calculation worksheet. Analysis of the worksheet shows that an essential calculation is to establish the premium that should have been paid. The premium is equal to one-one hundredth of each employee's pay, i.e. the gross payroll, which is then multiplied by an established rate based on the risk of injury (the approved manual rate). The evidence shows that the Department correctly calculated the payroll and, based on its own rule, the penalty to assess against the Petitioner, if the Petitioner were liable to secure workers' compensation coverage based upon being an employer in the construction industry.

29. The Respondent contends that the Petitioner engages in activities such as painting and carpentry which should be considered to be in the construction industry, according to the Scopes Manual. The Respondent references the list of jobs the Petitioner introduced into evidence showing such things as glazing windows, installing counter tops, repairing dog scratches, sanding two French doors, reinstalling a sink, assembling two chandeliers, installing attic access stairs, and repairing a faucet as being evidence of performing jobs that are characteristic of the construction industry. The Respondent concedes, however, in its Proposed Recommended Order that such activities would be part of the construction trades or industry "depending on the extent of the work."

30. The Petitioner, however, showed through his testimony and Exhibit Three that a majority of his work duties do not involve construction-type trade work. Thus, he performs such tasks, as referenced in the above findings of fact, involving assembly of a child swing set, cleaning a pool, installing a rope railing, cleaning a carpet, cleaning out and organizing garages, running various errands, etc. The vast majority of his duties do not involve construction industry trades such as carpentry, painting or electrical work. Even Mr. Robinson, testifying for the Respondent, acknowledged that the hanging of ceiling fans does not constitute a construction trade or

electrical work. The point is that even the Respondent has acknowledged that the extent to which such construction trade type work is done has a direct bearing on whether or not the Petitioner's duties in his business are to be considered "construction industry."

31. The greater weight of the credible, persuasive evidence shows that construction type work, such as painting, as primarily contended in this case, or even carpentry or very minor electrical work, was not of sufficient volume, type or importance as to support a determination that the Petitioner's job duties and business activities occur within the construction industry.

32. While the Petitioner attempted to establish that Scopes Category 9014, involving janitorial service, most directly and relevantly applied to his business, it has not been established that in the course of his duties he routinely cleans a building or structure in conjunction with his performance of minor repair and maintenance duties, etc. Thus the evidence does not clearly show that his work activities fit into the 9014 "janitorial service" category in the Scopes Manual. Whether or not that is the case, it does not obviate the showing by the Petitioner that his activities do not come within the ambit of the construction trade or the construction industry and the lack of persuasive proof by the Respondent that they do.^{2/}

33. In summary, the evidence and testimony adduced by the Petitioner is persuasive, credible, and of greater weight in showing that Mr. Quinn, the Petitioner, was not engaged in the construction industry at times pertinent hereto, most particularly April 23, 2008, and during the three-year investigatory period referenced above. Therefore, he was not liable for nor required to have workers' compensation coverage. Because the Department has not demonstrated that the Petitioner was engaged in the construction trades or industry it should not impose any penalty on James T. Quinn, d/b/a James Quinn Handyman, the Petitioner herein.

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 Department of Financial Services finding that James T. Quinn, d/b/a James Quinn Handyman was not required to secure payment of workers' compensation for any employee or employees and was not in violation of Sections 440.10(1)(a) and 440.38(1), Florida Statutes, during the times and circumstances pertinent to this proceeding. No penalty against said Petitioner should be assessed.

DONE AND ENTERED this 7th day of November, 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 7th day of November, 2008.

ENDNOTES

1/ §§ 440.02, 440.10, 440.38, and 440.107, Fla. Stat.

2/ The undersigned is mindful of the Respondent's argument that the Petitioner's testimony describing his contact with a representative of NCCI and his research into the documents from the "Florida Insurance Research Library" references hearsay and cannot be considered, even though no objection to the testimony or exhibit (Petitioner's Exhibit Two) was asserted. (See Harris v. Game and Fresh Water Fish Commission, 495 So. 2d 806, 809 (Fla. 1st DCA 1986)). The undersigned, however, has considered neither the use of that documentation from the "Florida Insurance Research Library" nor the hearsay statements of the representative of NCCI, with whom the Petitioner apparently conferred concerning his status as to whether his job duties required workers' compensation coverage, as the basis for any finding of fact. Rather, the findings of fact were based on the documents in evidence which qualified as competent evidence in terms of the hearsay standards of Chapter 90, Florida Statutes, and the Petitioner's and to some extent Mr. Robinson's own testimony. The above-referenced two hearsay sources, even though the Respondent did not object to the same, have only been considered as corroborative hearsay of the Petitioner's testimony and other evidence, as countenanced by Section

120.57(1)(c), Florida Statutes. They were not used in their own right to support fact finding.

COPIES FURNISHED:

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

Thomas H. Duffy, Esquire
Department of Financial Services
200 East Gaines Street, Sixth Floor
Tallahassee, Florida 32399-4229

Honorable Alex Sink
Chief Financial Officer
Department of Financial Regulation
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Daniel Sumner, General Counsel
Department of Financial Regulation
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0307

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.