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OCT 22 2010

Chief Financial Officer
Docketed by: YAB



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

IN THE MATTER OF:

Case No.: 10-059-D5-WC

**FERNANDEZ FINISHING, INC. D/B/A
FERNANDEZ PLASTERING, INC.**

FINAL ORDER

THIS PROCEEDING came on for final agency action and Alex Sink, Chief Financial Officer of the State of Florida, or her designee, having considered the record in this case, including the request for administrative hearing received from Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc., the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, being otherwise fully advised in the premises, hereby finds that:

1. On February 19, 2010, the Department of Financial Services, Division of Workers' Compensation (hereinafter "Department"), issued a Stop-Work Order and Order of Penalty Assessment in Division of Workers' Compensation Case No. 10-059-D5 to Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. The Stop-Work Order and Order of Penalty Assessment included a Notice of Rights wherein Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. was advised that any request for an administrative proceeding to challenge or contest the Stop-Work Order and Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the Stop-Work Order and Order of Penalty Assessment in accordance

with Sections 120.569 and 120.57, Florida Statutes, and must conform to Rule 28-106.2015, Florida Administrative Code.

2. On February 19, 2010, the Stop-Work Order and Order of Penalty Assessment was personally served on Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. A copy of the Stop-Work Order and Order of Penalty Assessment is attached hereto as "Exhibit A" and incorporated herein by reference.

3. On March 24, 2010, the Department issued an Amended Order of Penalty Assessment to Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. The Amended Order of Penalty Assessment assessed a total penalty of \$47,241.50 against Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. The Amended Order of Penalty Assessment included a Notice of Rights wherein Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. was advised that any request for an administrative proceeding to challenge or contest the Amended Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the Amended Order of Penalty Assessment in accordance with Sections 120.569 and 120.57, Florida Statutes, and must conform to Rule 28-106.2015, Florida Administrative Code.

4. On April 1, 2010, the Amended Order of Penalty Assessment was personally served on Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On April 22, 2010, Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. filed a petition for administrative review ("Petition") with the Department, which was forwarded to the Division of Administrative Hearings and assigned DOAH Case No. 10-3293. A copy of the Petition is attached hereto as "Exhibit C".

6. On June 17, 2010, the Department served its First Interlocking Discovery Requests (“discovery requests”) on Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. Pursuant to Rules 1.340(a), 1.350(b), and 1.370(a), Florida Rules of Civil Procedure, adopted by Rule 28-106.206, Florida Administrative Code, responses to the Department’s discovery requests were due within thirty days after service of the discovery requests.

7. On July 27, 2010, after receiving no responses to its discovery requests, the Department filed with the Division of Administrative Hearings a Motion to Compel Discovery. On August 10, 2010, Administrative Law Judge C.B. Arrington entered an Order granting the Department’s Motion to Compel Discovery. The Order required Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. to respond to the Department’s discovery requests on or before August 23, 2010.

8. On August 24, 2010, the Department filed with the Division of Administrative Hearings a Motion to Amend Order of Penalty Assessment with an attached 2nd Amended Order of Penalty Assessment. The 2nd Amended Order of Penalty Assessment assessed a total penalty of \$44,336.72 against Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. On September 2, 2010, Administrative Law Judge C.B. Arrington entered an Order granting the Department’s Motion to Amend Order of Penalty Assessment. A copy of the 2nd Amended Order of Penalty Assessment is attached hereto as “Exhibit D” and incorporated herein by reference.

9. On August 27, 2010, after receiving no responses to the Department’s discovery requests, the Department filed a Motion for Order to Show Cause. On September 10, 2010, Administrative Law Judge C.B. Arrington entered an Order to Show Cause which deemed all outstanding requests for admission admitted and required Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. to show cause in writing by September 24, 2010, why the file of the

Division of Administrative Hearings should not be closed and jurisdiction of the matter relinquished to the Department for disposition on the admitted facts.

10. On October 11, 2010, Administrative Law Judge C.B. Arrington entered an Amended Order Closing File after Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. failed to respond to the Order to Show Cause. Administrative Law Judge C.B. Arrington's October 11, 2010 Order is attached hereto as "Exhibit E".

FINDINGS OF FACT

11. The factual allegations contained in the Stop-Work Order and Order of Penalty Assessment issued on February 19, 2010, the Amended Order of Penalty Assessment issued on March 24, 2010, and the 2nd Amended Order of Penalty Assessment filed with the Division of Administrative Hearings on August 24, 2010, attached hereto as "Exhibit A", "Exhibit B", and "Exhibit D" respectively, and fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

CONCLUSIONS OF LAW

12. Based upon the Findings of Fact adopted herein, the Department concludes that Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. violated the specific statutes and rules alleged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, and hereby adopts the violation(s) charged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment as the Department's Conclusions of Law in this case.

PENALTY IMPOSED

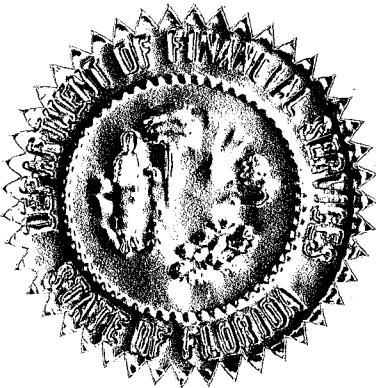
13. Judge C.B. Arrington's September 10, 2010 Order which deemed all outstanding requests for admission admitted and October 11, 2010 Order which relinquished jurisdiction of this matter to the Department constitute grounds for the Chief Financial Officer to impose the penalty as set forth herein.


IT IS THEREFORE ORDERED that:

a. Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. shall immediately pay the total penalty of \$44,336.72 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund; and

b. Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. shall immediately cease all business operations in the State of Florida until such time as the Department issues an Order releasing the Stop-Work Order and Order of Penalty Assessment. The Department shall not issue an Order releasing the Stop-Work Order and Order of Penalty Assessment until Fernandez Finishing, Inc. d/b/a Fernandez Plastering, Inc. has come into compliance with the coverage requirements of Chapter 440, Florida Statutes, and has paid a total penalty of \$44,336.72 to the Department.

DONE and ORDERED this 22nd day of October, 2010.




TANNER HOLLOMAN, DIRECTOR
DIVISION OF WORKERS' COMPENSATION

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 Florida Rule of Appellate Procedure 9.110. Review proceedings must be instituted by filing a Notice of Appeal with Julie Jones, DFS Agency Clerk, Department of Financial Services, Room 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida, 32399-0390 and a copy of the Notice of Appeal, a copy of this Order and filing fee with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

COPIES FURNISHED TO:

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