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Chief Financial Officer
Docketed by: BBB

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

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DIVISION OF
ADMINISTRATIVE
SERVICES

IN THE MATTER OF:

Case No.: 09-360-D3-OPA-WC

WINE WAREHOUSE OF ST. PETERSBURG, INC.

FINAL ORDER

THIS PROCEEDING came on for final agency action and Jeff Atwater, Chief Financial Officer of the State of Florida, or his designee, having considered the record in this case, including the request for administrative hearing received from Wine Warehouse of St. Petersburg, Inc., the Order of Penalty Assessment, the Amended Order of Penalty Assessment, the 2nd Amended Order of Penalty Assessment, and the 3rd Amended Order of Penalty Assessment, and being otherwise fully advised in the premises, hereby finds that:

1. On February 1, 2010, the Department of Financial Services, Division of Workers' Compensation (hereinafter "Department"), issued an Order of Penalty Assessment in Division of Workers' Compensation Case No. 09-360-D3-OPA to Wine Warehouse of St. Petersburg, Inc. The Order of Penalty Assessment assessed a total penalty of \$26,455.55 against Wine Warehouse of St. Petersburg, Inc. for its failure to secure workers' compensation for its employees as required by Chapter 440, Florida Statutes. The Order of Penalty Assessment included a Notice of Rights wherein Wine Warehouse of St. Petersburg, Inc. was advised that any request for an administrative proceeding to challenge or contest the Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the 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 4, 2010, the Order of Penalty Assessment was served on Wine Warehouse of St. Petersburg, Inc. by certified mail. A copy of the Order of Penalty Assessment is attached hereto as "Exhibit A" and incorporated herein by reference.

3. On March 18, 2010, the Department issued an Amended Order of Penalty Assessment to Wine Warehouse of St. Petersburg, Inc. The Amended Order of Penalty Assessment assessed a total penalty of \$12,368.81 against Wine Warehouse of St. Petersburg, Inc. The Amended Order of Penalty Assessment included a Notice of Rights wherein Wine Warehouse of St. Petersburg, 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 March 24, 2010, the Amended Order of Penalty Assessment was served on Wine Warehouse of St. Petersburg, Inc. by certified mail. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On April 14, 2010, Wine Warehouse of St. Petersburg, Inc. filed a request for an administrative hearing ("Petition") with the Department, which was forwarded to the Division of Administrative Hearings and assigned DOAH Case No. 10-6375. A copy of the Petition is attached hereto as "Exhibit C".

6. On September 28, 2010, the Department issued a 2nd Amended Order of Penalty Assessment to Wine Warehouse of St. Petersburg, Inc. The 2nd Amended Order of Penalty Assessment assessed a total penalty of \$10,169.99 against Wine Warehouse of St. Petersburg, Inc.

7. On September 29, 2010, the Department filed a Motion to Amend Order of Penalty Assessment with the attached 2nd Amended Order of Penalty Assessment with the Division of Administrative Hearings in DOAH Case No. 10-6375. On December 23, 2010, Administrative Law Judge B. J. Staros entered an Order granting the Department's Motion to Amend. A copy of the 2nd Amended Order of Penalty Assessment is attached hereto as "Exhibit D" and incorporated herein by reference.

8. On December 28, 2010, the Department issued a 3rd Amended Order of Penalty Assessment to Wine Warehouse of St. Petersburg, Inc. The 3rd Amended Order of Penalty Assessment assessed a total penalty of \$10,037.97 against Wine Warehouse of St. Petersburg, Inc.

9. On December 28, 2010, after receiving written notification from Wine Warehouse of St. Petersburg, Inc. that it did not wish to proceed to an administrative hearing in this matter, the Department filed a Joint Motion to Relinquish Jurisdiction in DOAH Case No. 10-6375. As a result, Administrative Law Judge B. J. Staros entered an Order Closing File, relinquishing jurisdiction of this matter to the Department. A copy of the Order Closing File is attached hereto as "Exhibit E".

10. On January 13, 2011, the Department and Wine Warehouse of St. Petersburg, Inc. entered into a Settlement Agreement wherein Wine Warehouse of St. Petersburg, Inc. agreed to pay the Department the penalty assessed in the 3rd Amended Order of Penalty Assessment in the amount of \$10,037.97.

11. On January 27, 2011, the 3rd Amended Order of Penalty Assessment was served by certified mail on Wine Warehouse of St. Petersburg, Inc. The 3rd Amended Order of Penalty Assessment included a Notice of Rights wherein Wine Warehouse of St. Petersburg, Inc. was

advised that any request for an administrative proceeding to challenge or contest the 3rd Amended Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the 3rd 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. A copy of the 3rd Amended Order of Penalty Assessment is attached hereto as "Exhibit F" and incorporated herein by reference.

FINDINGS OF FACT

12. The factual allegations contained in the Order of Penalty Assessment issued on February 1, 2010, the Amended Order of Penalty Assessment issued on March 18, 2010, the 2nd Amended Order of Penalty Assessment issued on September 28, 2010, and the 3rd Amended Order of Penalty Assessment issued on December 28, 2010, attached as "Exhibit A", "Exhibit B", "Exhibit D", and "Exhibit F", respectively, and fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

CONCLUSIONS OF LAW

13. Based upon the Findings of Fact adopted herein, the Department concludes that Wine Warehouse of St. Petersburg, Inc. violated the specific statutes and rules alleged in the Order of Penalty Assessment, the Amended Order of Penalty Assessment, the 2nd Amended Order of Penalty Assessment, and the 3rd Amended Order of Penalty Assessment, and hereby adopts the violation(s) charged in the Order of Penalty Assessment, the Amended Order of Penalty Assessment, the 2nd Amended Order of Penalty Assessment, and the 3rd Amended Order of Penalty Assessment as the Conclusions of Law in this case.

PENALTY IMPOSED

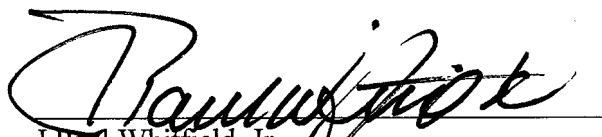
14. The Settlement Agreement, the Order Closing File from the Division of Administrative Hearings, the Order of Penalty Assessment, the Amended Order of Penalty Assessment, the 2nd Amended Order of Penalty Assessment, and the 3rd Amended Order of Penalty Assessment, taken together with the Findings of Fact and Conclusions of Law adopted herein, constitute grounds for the Chief Financial Officer to impose the penalty as set forth herein.

IT IS THEREFORE ORDERED that:

Wine Warehouse of St. Petersburg, Inc. shall immediately pay the total penalty of \$10,037.97 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund.

DONE and ORDERED this 4th day of March, 2011.




J Paul Whitfield, Jr.
Deputy Chief Financial Officer

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:

Melinda Dorn
Wine Warehouse of St. Petersburg, Inc.
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