

FILED

DEC 10 2010

Chief Financial Officer
Docketed by: MLB



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

002585

FILED
2010 DEC 13 P 12:03
DIVISION OF
ADMINISTRATIVE
HEARINGS

IN THE MATTER OF:

Case No.: 10-189-D1-WC

**FABIANO SILVA D/B/A GARDEN
DREAMS LANDSCAPING**

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 FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING, the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, and being otherwise fully advised in the premises, hereby finds that:

1. On June 18, 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. 10-189-D1 to FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING. The Stop-Work Order and Order of Penalty Assessment included a Notice of Rights wherein FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING 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 June 19, 2010, the Stop-Work Order and Order of Penalty Assessment was served on FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING by certified mail. 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 July 8, 2010, the Department issued an Amended Order of Penalty Assessment to FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING. The Amended Order of Penalty Assessment assessed a total penalty of \$11,801.36 against FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING. The Amended Order of Penalty Assessment included a Notice of Rights wherein FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING 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 August 16, 2010, the Amended Order of Penalty Assessment was filed with the Division of Administrative Hearings. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On August 2, 2010, FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING filed a petition for administrative review ("Petition") with the Department, which was forwarded to the Division of Administrative Hearings and assigned DOAH Case No. 10-7525. A copy of the Petition is attached hereto as "Exhibit C".

6. On October 4, 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 reduced the penalty assessed against FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING to \$1,000.00. A copy of the 2nd Amended Order of Penalty Assessment is attached hereto as "Exhibit D" and incorporated herein by reference.

7. On October 7, 2010, FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING informed the Department that FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING did not wish to proceed to an administrative hearing in DOAH Case No. 10-7525.

8. On October 7, 2010, the Department filed a Joint Motion to Relinquish Jurisdiction with the Division of Administrative Hearings. As a result, Administrative Law Judge Barbara 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".

FINDINGS OF FACT

9. The factual allegations contained in the Stop-Work Order and Order of Penalty Assessment issued on June 18, 2010, the Amended Order of Penalty Assessment issued on July 8, 2010, and the 2nd Amended Order of Penalty Assessment issued on September 30, 2010, attached 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

10. Based upon the Findings of Fact adopted herein, the Department concludes that FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING 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 Conclusions of Law in this case.

PENALTY IMPOSED

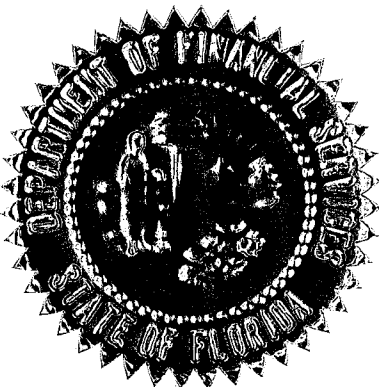
11. The Order Closing File from the Division of Administrative Hearings, the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, taken together with the Findings of Fact and Conclusions of Law adopted herein, constitute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

IT IS THEREFORE ORDERED that:

a. FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING shall immediately pay the total penalty of \$1,000.00 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund; and

b. FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING 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 FABIANO SILVA D/B/A GARDEN DREAMS LANDSCAPING has come into compliance with the coverage requirements of Chapter 440, Florida Statutes and has paid a total penalty of \$1,000.00 to the Department.

DONE and ORDERED this 10th day of December, 2010.



A handwritten signature in black ink, appearing to read "T. J. Holloman".

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:

FABIANO SILVA
GARDEN DREAMS LANDSCAPING
2119 ALFA ROMEO DRIVE
JACKSONVILLE, FLORIDA 32246

JOE CALLAHAN
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF WORKERS' COMPENSATION
BUREAU OF COMPLIANCE
921 NORTH DAVIS STREET
JACKSONVILLE, FLORIDA 32209

HOLLY WERKEMA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF LEGAL SERVICES
200 EAST GAINES STREET
TALLAHASSEE, FLORIDA 32399-4229