

FILED

MAR 17 2011

000413



Chief Financial Officer
Docketed by: 4300

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

FILED

2011 MAR 18 A 11:13

DIVISION OF
ADMINISTRATIVE
HEARINGS

IN THE MATTER OF:

Case Number: 10-270-D7-WC

FODEN CONSTRUCTION DRYWALL
DIVISION, 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 Stop-Work Order and Order of Penalty Assessment and the Amended Order of Penalty Assessment served in Division of Workers' Compensation Case No. 10-270-D7, and being otherwise fully advised in the premises, hereby finds that:

1. On October 12, 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. 10-270-D7 to FODEN CONSTRUCTION DRYWALL DIVISION, INC. (FODEN). The Stop-Work Order and Order of Penalty Assessment included a Notice of Rights wherein FODEN 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.

2. On October 13, 2010, the Stop-Work Order and Order of Penalty Assessment was served via personal service on FODEN. 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 October 27, 2010, the Department issued an Amended Order of Penalty Assessment to FODEN in Case No. 10-270-D7. The Amended Order of Penalty Assessment assessed a total penalty of \$47,409.98 against FODEN. The Amended Order of Penalty Assessment included a Notice of Rights wherein FODEN 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.

4. The Amended Order of Penalty Assessment was served on FODEN by personal service on November 5, 2010. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On October 26, 2010, FODEN filed a timely Petition for a formal administrative hearing in accordance with Sections 120.569 and 120.57, Florida Statutes. The Petition was forwarded to the Division of Administrative Hearings and assigned Case No. 10-10768.

6. On December 28, 2010, the Department served its First Interlocking Discovery Requests upon FODEN, consisting of 11 requests for admissions, 14 requests for production, and 15 interrogatories. FODEN's responses to the Department's First Interlocking Discovery Requests were due within 35 days, or by February 1, 2011.

7. On February 9, 2011, the Department filed a Motion to Compel Discovery Responses, seeking an Order from the Administrative Law Judge which compelled FODEN to respond to the Department's First Interlocking Discovery Requests.

8. On February 11, 2011, Administrative Law Judge Eleanor Hunter issued an Order Granting Motion to Compel Discovery Responses, directing FODEN to submit its responses to the Department's First Interlocking Discovery Requests on or before February 18, 2011. A copy of the Order Granting Motion to Compel Discovery Responses is attached hereto as "Exhibit C."

9. On February 18, 2011, the Department filed its Motion to Deem Matters Admitted and to Relinquish Jurisdiction Pursuant to S. 120.57(i), Florida Statutes, based on FODEN's failure to submit responses to the Department's First Interlocking Discovery Requests, as required by the February 11, 2011 Order Granting Motion to Compel Discovery Responses.

10. On February 22, 2011, Administrative Law Judge Eleanor Hunter entered an Order Granting Motion to Deem Matters Admitted and Relinquishing Jurisdiction and Closing File, relinquishing jurisdiction to the Department. A copy of this Order is attached hereto as "Exhibit D."

FINDINGS OF FACT

11. The factual allegations in the Stop-Work Order and Order of Penalty Assessment issued on October 12, 2010, and the Amended Order of Penalty Assessment issued on October 27, 2010, which are fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

CONCLUSIONS OF LAW

12. Based on the Findings of Fact adopted herein, the Department concludes that FODEN violated the specific statues and rules alleged in the Stop-Work Order and Order of Penalty Assessment and the Amended Order of Penalty Assessment, and hereby adopts the violations charged in the Stop-Work Order and Order of Penalty Assessment and the Amended Order of Penalty Assessment as the Conclusions of Law in this case.

PENALTY IMPOSED

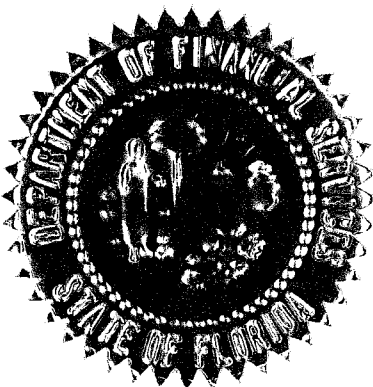
13. The Stop-Work Order and Order of Penalty Assessment, Amended Order of Penalty Assessment, and February 22, 2011 Order Granting Motion to Deem Matters Admitted and Relinquishing Jurisdiction and Closing File, taken together with the Findings of Fact and Conclusions of Law adopted herein, constitute grounds for the Chief Financial Officer to impose the penalty and order the cessation of business operations as set forth herein.

IT IS THEREFORE ORDERED that:

a) FODEN shall immediately pay the total penalty of \$47,409.98 in full to the Department for deposit into the Workers' Compensation Administration Trust Fund, based upon its violation of the workers' compensation coverage requirements contained in Chapter 440, Florida Statutes.

b) FODEN 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 FODEN has come into compliance with the coverage requirements of Chapter 440, Florida Statutes, and has paid the total penalty of \$47,409.98 to the Department.

DONE AND ORDERED this 17th day of March, 2010.




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 the Agency Clerk at Room 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida, 32399-0333 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:

Foden Construction Drywall Division, Inc.
c/o James Porter
2800 Davis Boulevard, #8
Naples, Florida 34104

Timothy L. Newhall
Assistant General Counsel
Department of Financial Services
200 E. Gaines Street
Tallahassee, FL 32399-4229