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JAN 27 2012



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

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DIVISION OF
ADMINISTRATIVE
HEARINGS

Docketed by TmT

IN THE MATTER OF:

JORGE L. GARCIA
_____ /

W.C. Case No. 117646-WC
DOAH Case No. 11-2463

FINAL ORDER

THIS CAUSE came on for consideration of and final agency action on the Recommended Order rendered by Administrative Law Judge Lynn A. Quimby-Pennock (ALJ) on November 30, 2011, subsequent to a hearing held on September 14, 2011, in Tallahassee and Orlando, Florida, via video teleconference. The Division of Workers' Compensation timely filed an exception. No response to that exception was filed.

RULING ON THE DIVISION'S EXCEPTION

The Division takes exception to the ALJ's use of the word "affiliation" in Paragraph 31 of the Findings of Fact. It does not appear to have been the ALJ's intent to have used that word to denote a statutory disassociation with Tempmaster so as to allow Garcia to become eligible for an exemption from the workers' compensation requirements. However, the word, "affiliation", as used in Section 440.05(15), Fla. Stat., denotes a relationship that continues until such time as any previous penalty order delinquencies have been fully retired. In simple terms, such a delinquency survives any resignations or other terminations, and disqualifies a person "affiliated" with a delinquent entity from obtaining a worker's compensation exemption until the delinquency is satisfied. Thus, the plain language of the statute controls the question of any such "affiliation". A review of the entire record shows no evidence to support the finding that

such an "affiliation" ended on July 11, 2011. To that extent, the exception is accepted, and Paragraph 31 of the Recommended Order is modified to read as follows:

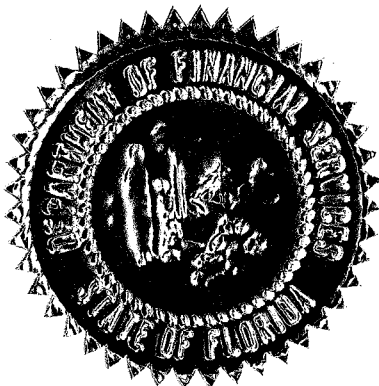
These actions ended Respondent's status as a corporate officer and registered agent of Tempmaster, albeit well after his April 13, 2011 Election of Exemption was filed with the Department. However, that resignation did not change his status as a person affiliated with the delinquent Tempmaster under Section 440.05 (15), Fla. Stat. Therefore, Respondent is still "affiliated" with Tempmaster and is Ineligible for an exemption until and unless the delinquency is satisfied.


After a review of the record, including the transcript of proceedings and admitted exhibits, and considering applicable law, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that except as noted above, the ALJ's Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted as the Department's Findings of Fact and Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that JORGE L. GARCIA, (Corporate Officer and ten percent owner of All Construction Services of Central Florida, Inc.) is ineligible for an election to be exempt pursuant to Section 440.05(15), Florida Statutes (2010).

DONE and ORDERED this 27th day of January, 2012.




Robert C. Kneip
Chief of Staff

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 Rule 9.110, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, DFS Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0390 and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

Copies to:

Keith A. Graham, Attorney for Jorge L. Garcia
Alexander Brick, Attorney for the Department
Lynne A. Quimby-Pennock, ALJ