

**FILED**

OCT 25 2011

003379



Chief Financial Officer  
Docketed by: BBB

CHIEF FINANCIAL OFFICER  
**JEFF ATWATER**  
STATE OF FLORIDA

**FILED**  
11 OCT 26 PM 1:53  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

IN THE MATTER OF:

CASE NO.: 09-203-D3-WC

WAYNE FONTAN D/B/A  
WAYNE'S WINDOW COMPANY  
\_\_\_\_\_ /

**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 Petition received from WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY, as well as the Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment, the Amended Order of Penalty Assessment, the 2<sup>nd</sup> Amended Order of Penalty Assessment, and the 3<sup>rd</sup> Amended Order of Penalty Assessment, and being otherwise fully advised in the premises, hereby finds that:

**FINDINGS OF FACT**

1. On July 28, 2009, the Department of Financial Services, Division of Workers' Compensation (hereinafter "Department") issued a Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment in Division of Workers' Compensation Case No. 09-203-D3 to WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. The Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment included a Notice of Rights wherein WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY was advised that any request for an administrative proceeding to challenge or contest the Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the Stop-Work Order for Specific Worksite Only 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 July 28, 2009, the Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment was served by personal service on WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. A copy of the Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment is attached hereto as "Exhibit A" and incorporated herein by reference.

3. On September 1, 2009, the Department issued an Amended Order of Penalty Assessment to WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. The Amended Order of Penalty Assessment assessed a total penalty of \$32,022.75 against WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. The Amended Order of Penalty Assessment included a Notice of Rights wherein WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY 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 June 15, 2010, the Amended Order of Penalty Assessment was served by process server on WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On August 10, 2009, WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY filed a Petition for Administrative Review Hearing ("Petition") with the Department. On or about September 7, 2010, Counsel for the Respondent filed a supplemental Petition with the Department. This second petition for administrative review was forwarded to the Division of Administrative Hearings on June 2, 2011, and the matter was assigned DOAH Case No. 11-2792. A

copy of the petitions are attached hereto as composite "Exhibit C" and incorporated herein by reference.

6. On November 8, 2010, the Department issued a 2<sup>nd</sup> Amended Order of Penalty Assessment to WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. The 2<sup>nd</sup> Amended Order of Penalty Assessment assessed a total penalty of \$28,085.27 against WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. The 2<sup>nd</sup> Amended Order of Penalty Assessment included a Notice of Rights wherein WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY was advised that any request for an administrative proceeding to challenge or contest the 2<sup>nd</sup> Amended Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the 2<sup>nd</sup> 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.

7. On December 9, 2010, the 2<sup>nd</sup> Amended Order of Penalty Assessment was served by certified mail on WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. A copy of the 2<sup>nd</sup> Amended Order of Penalty Assessment is attached hereto as "Exhibit D" and incorporated herein by reference.

8. On September 7, 2011, the Department issued a 3<sup>rd</sup> Amended Order of Penalty Assessment to WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. The 3<sup>rd</sup> Amended Order of Penalty Assessment assessed a total penalty of \$27,772.17 against WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. The 3<sup>rd</sup> Amended Order of Penalty Assessment included a Notice of Rights wherein WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY was advised that any request for an administrative proceeding to challenge or contest the 3<sup>rd</sup> Amended Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the 3<sup>rd</sup> 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.

9. On October 4, 2011, the Petitioner and Respondent came to a Settlement Agreement. The Settlement Agreement is attached hereto as "Exhibit E" and incorporated herein by reference.

10. On October 13, 2011, the Administrative Law Judge issued an Order Closing File. A copy of the Order Closing File is attached hereto as "Exhibit F" and incorporated herein by reference.

11. On October 18, 2011, the 3<sup>rd</sup> Amended Order of Penalty Assessment was served by the Department via facsimile on WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY. Service was accepted by Mr. AJ Alvarez, Attorney for Respondent. A copy of the 3<sup>rd</sup> Amended Order of Penalty Assessment is attached hereto as "Exhibit G" and incorporated herein by reference.

#### CONCLUSIONS OF LAW

12. The conclusions of law contained in the Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment, issued on July 28, 2009, the Amended Order of Penalty Assessment, issued on September 1, 2009, the 2<sup>nd</sup> Amended Order of Penalty Assessment issued on November 8, 2010, and the 3<sup>rd</sup> Amended Order of Penalty Assessment, issued on September 7, 2011, and which are fully incorporated herein by reference, are adopted as the Department's Conclusions of Law in this matter.

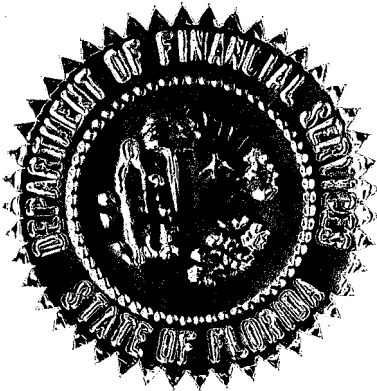
#### **IT IS HEREBY ORDERED** that


a. The Stop-Work Order for Specific Worksite Only and Order of Penalty Assessment, issued on July 28, 2009, the Amended Order of Penalty Assessment, issued on September 1, 2009, the 2<sup>nd</sup> Amended Order of Penalty Assessment, issued on November 8, 2010, and the 3<sup>rd</sup> Amended Order of Penalty Assessment, issued on September 7, 2011, are affirmed; and

b. WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY shall pay the total penalty of \$27,772.17 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund.

c. WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY shall not conduct any business operations at 8456 Creedmoor Lane, New Port Richey, Florida unless and until the full amount of the penalty has been paid and WAYNE FONTAN D/B/A WAYNE'S WINDOW COMPANY has shown the Department proof of current compliance with Chapter 440, Florida Statutes.

DONE AND ORDERED on this 25<sup>th</sup> day of October, 20 11.



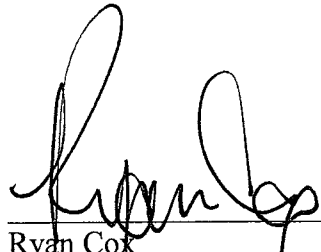
  
E. Tanner Holloman  
Director, Division of Workers' Compensation

## **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.

**SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail to  
Wayne Fontan at 17569 Cedarwood Loop, Lutz, Florida 33558 on this 25<sup>th</sup> day of  
October, 2011.



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Ryan Cox  
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Department of Financial Services  
Division of Legal Services  
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