

**FILED**

MAY 21 2012

Chief Financial Officer

Docketed by: BA



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

**FILED**  
2012 MAY 22 A 10:39  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

IN THE MATTER OF:

Case No.: 11-220-D3-WC

KENNETH CONNOLLY CORP  
\_\_\_\_\_ /

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 KENNETH CONNOLLY CORP, the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, the 2nd Amended Order of Penalty Assessment, and the Order Dismissing Petition for Section 120.57, Florida Statutes, Proceeding Without Prejudice, and being otherwise fully advised in the premises, hereby finds that:

1. On August 30, 2011, 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. 11-220-D3 to KENNETH CONNOLLY CORP. The Stop-Work Order and Order of Penalty Assessment included a Notice of Rights wherein KENNETH CONNOLLY CORP 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 August 30, 2011, the Stop-Work Order and Order of Penalty Assessment was served by personal service on KENNETH CONNOLLY CORP. 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 September 21, 2011, the Department issued an Amended Order of Penalty Assessment to KENNETH CONNOLLY CORP. The Amended Order of Penalty Assessment assessed a total penalty of \$27,105.70 against KENNETH CONNOLLY CORP. The Amended Order of Penalty Assessment included a Notice of Rights wherein KENNETH CONNOLLY CORP 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 September 27, 2011, the Amended Order of Penalty Assessment was served by certified mail on KENNETH CONNOLLY CORP. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On October 13, 2011, the Department received an Election of Proceeding requesting administrative review ("Petition") from KENNETH CONNOLLY CORP. A copy of the Petition is attached hereto as "Exhibit C" and incorporated herein by reference.

6. Pursuant to Sections 120.54(5)(b) and 120.569(2), Florida Statutes, the Department carefully reviewed the Petition to determine if it was in substantial compliance with Rule 28-106.2015, Florida Administrative Code, which requires that a Petition requesting an administrative review contain the following:

a. The name, address, and telephone number, and facsimile number (if any) of the respondent.

b. The name, address, telephone number, facsimile number of the attorney or qualified representative of the respondent (if any) upon whom service of pleadings and other papers shall be made.

c. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

d. A statement of when the respondent received notice of the administrative complaint.

e. A statement including the file number to the administrative complaint.

7. The Petition filed by KENNETH CONNOLLY CORP omitted the required statement identifying those material facts alleged by the Department that are in dispute.

8. On October 26, 2011, the Department issued an Order Dismissing Petition For Section 120.57, Florida Statutes, Proceeding Without Prejudice, to KENNETH CONNOLLY CORP. The Order Dismissing Petition For Section 120.57, Florida Statutes, Proceeding Without Prejudice granted KENNETH CONNOLLY CORP twenty-one days to file an amended petition curing the above-cited defects.

9. On October 28, 2011, the Order Dismissing Petition For Section 120.57, Florida Statutes, Proceeding Without Prejudice, was served by certified mail on KENNETH CONNOLLY CORP. A copy of the Order Dismissing Petition For Section 120.57, Florida Statutes, Proceeding Without Prejudice, is attached hereto as "Exhibit D" (excluding exhibits) and incorporated herein by reference.

10. On November 15, 2011, the Department received a Formal Request for an Administrative Hearing ("Amended Petition") from KENNETH CONNOLLY CORP, and the matter was referred to the Division of Administrative Hearings and assigned DOAH case no. 11-

6040. A copy of the Amended Petition is attached hereto as "Exhibit E" and incorporated herein by reference.

11. On November 30, 2011, the Department served its First Interlocking Discovery Request ("discovery request") on KENNETH CONNOLLY CORP pursuant to Rules 1.340(a), 1.350(b), and 1.370(a), Florida Rules of Civil Procedure.

12. On January 20, 2012, the Department filed a Motion to Deem Matters Admitted and Relinquish Jurisdiction pursuant to section 120.57(1)(i), Florida Statutes, after having not received any answer from KENNETH CONNOLLY CORP to the Department's discovery request.

13. On January 24, 2012, the Department issued a 2nd Amended Order of Penalty Assessment to KENNETH CONNOLLY CORP. The 2nd Amended Order of Penalty Assessment assessed a total penalty of \$16,551.78 against KENNETH CONNOLLY CORP. The 2nd Amended Order of Penalty Assessment included a Notice of Rights wherein KENNETH CONNOLLY CORP was advised that any request for an administrative proceeding to challenge or contest the 2nd Amended Order of Penalty Assessment must be filed within twenty-one (21) days of receipt of the 2nd 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.

14. On February 9, 2012, the Administrative Law Judge entered an Order Closing File and Relinquishing Jurisdiction. A copy of the Order Closing File and Relinquishing Jurisdiction is attached hereto as "Exhibit F" and incorporated herein by reference.

15. On March 16, 2012, the 2nd Amended Order of Penalty Assessment was served by personal service on KENNETH CONNOLLY CORP. A copy of the 2nd Amended Order of Penalty Assessment is attached hereto as "Exhibit G" and incorporated herein by reference.

16. KENNETH CONNOLLY CORP failed to answer the 2nd Amended Order of Penalty Assessment or request a proceeding in accordance with Sections 120.569 and 120.57, Florida Statutes.

#### FINDINGS OF FACT

17. The factual allegations contained in the Stop-Work Order and Order of Penalty Assessment issued on August 30, 2011, the Amended Order of Penalty Assessment issued on September 21, 2011, and the 2nd Amended Order of Penalty Assessment issued on January 24, 2012, and fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

#### CONCLUSIONS OF LAW

18. The Department has jurisdiction over the subject matter of and the parties to this matter pursuant to Chapter 440, Florida Statutes.

19. Based upon the Findings of Fact adopted herein, the Department concludes that KENNETH CONNOLLY CORP 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

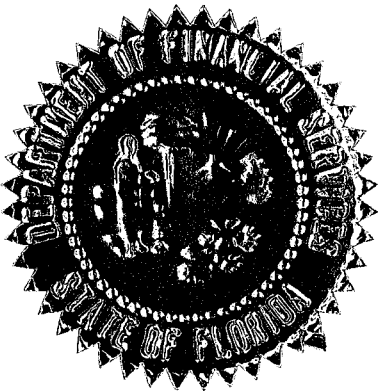
20. The Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the 2nd Amended Order of Penalty Assessment, taken together with the Findings of Fact and Conclusions of Law adopted herein, constitute grounds for the Chief Financial Officer to impose the penalty as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

IT IS THEREFORE ORDERED that:

a. KENNETH CONNOLLY CORP shall immediately pay the total penalty of \$16,551.78 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund;

b. KENNETH CONNOLLY CORP shall immediately cease all business operations until such time as the Department issues an order releasing the Stop-Work Order and Order of Penalty Assessment and the 2nd Amended Order of Penalty Assessment. The Department shall not issue an order releasing the Stop-Work Order and Order of Penalty Assessment and the 2nd Amended Order of Penalty Assessment until KENNETH CONNOLLY CORP has come into compliance with the coverage requirements of Chapter 440, Florida Statutes, and has paid the total penalty of \$16,551.78 to the Department.

DONE and ORDERED this 21<sup>st</sup> day of May, 2012.



  
E. Tanner Holloman  
Director, 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:

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KENNETH CONNOLLY CORP  
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