

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL  
SERVICES, DIVISION OF WORKERS'  
COMPENSATION,

Petitioner,

vs.

Case No. 15-3479

VLASNIK CARPENTRY AND  
CONSTRUCTION, INC.,

Respondent.

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RECOMMENDED ORDER

A final hearing was held in this matter before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings (DOAH), on August 5, 2015, in Pensacola, Florida.

APPEARANCES

For Petitioner: Trevor S. Suter, Esquire  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-4229

For Respondent: Lonnie L. Vlasnik, pro se  
6305 Cotton Street  
Pensacola, Florida 32526

STATEMENT OF THE ISSUES

The issues are whether Respondent, Vlasnik Carpentry and Construction, Inc., failed to secure workers' compensation coverage for its employees, and, if so, whether the Department of

Financial Services, Division of Workers' Compensation (Department), correctly calculated the penalty assessment imposed against Respondent.

PRELIMINARY STATEMENT

This proceeding arose from the requirement that employers must secure workers' compensation insurance for their employees. On March 23, 2015, the Department served a Stop-Work Order and Order of Penalty Assessment (Stop-Work Order) on Respondent for failing to secure workers' compensation for the benefit of its employees as required by chapter 440, Florida Statutes. On May 22, 2015, Respondent timely filed its Petition to Request Hearing for Administrative Review, disputing the Department's calculation of the penalty. On June 18, 2015, the matter was referred to DOAH and was assigned to the undersigned. On June 22, 2015, the Department served an amended order of penalty assessment on Respondent assessing a penalty of \$8,240.60.

At the hearing, Petitioner presented the testimony of Kali King, a compliance investigator, and Lawrence Pickle, a penalty auditor, and offered eight exhibits, all of which were admitted into evidence. Respondent presented the testimony of Lonnie Vlasnik, director of Vlasnik Carpentry and Construction, Inc., and offered three exhibits into evidence, all of which were admitted into evidence.

A one-volume Transcript of the final hearing was filed on August 24, 2015. After the hearing, Petitioner filed its proposed Findings of Fact and Conclusions of Law on September 3, 2015. Respondent did not file a proposed recommended order.

References to statutes are to Florida Statutes (2014), unless otherwise noted.

#### FINDINGS OF FACT

1. The Department is the state agency responsible for enforcing the statutory requirement that employers secure the payment of workers' compensation for the benefit of its employees.

2. Respondent was a business providing services in the construction industry with its principal office located at 6305 Cotton Street, Pensacola, Florida 32526.

3. Respondent was administratively dissolved for failure to file its annual report with the Florida Secretary of State, Division of Corporations, on September 25, 2009. As of the date of the hearing, Respondent had not been reinstated as an active corporation.

4. Mr. Lonnie L. Vlasnik, former director of Respondent, filed papers to create a limited liability corporation, Vlasnik Carpentry, L.L.C., on April 20, 2015. Mr. Vlasnik is the sole managing member of the L.L.C.

5. On March 23, 2015, the Department's compliance investigator, Kali King, observed Mr. Vlasnik replacing the decking on a porch. She interviewed Mr. Vlasnik who stated he was working for the homeowner and that he possessed a valid exemption from workers' compensation. Mr. Vlasnik told Ms. King the name of the business under which he had the exemption.

6. After gathering the information from Mr. Vlasnik, Ms. King consulted the Division of Corporations website to determine, among other things, the identity of Respondent's corporate officers. She learned that Mr. Vlasnik and his wife were the sole directors of the corporation. She also learned that the corporation was "inactive."

7. Ms. King consulted the Department's Coverage and Compliance Automated System (CCAS) for proof of workers' compensation coverage and for any exemptions associated with Respondent.

8. An exemption is a method whereby a corporate officer can be relieved of the responsibility of the requirements of chapter 440 pursuant to section 440.05.

9. CCAS is the Department's internal database that contains workers' compensation insurance policy and exemption information. Insurance providers are required to report insurance coverage information to the Department which is then inputted into CCAS.

10. Ms. King's CCAS search revealed that Respondent did not have a workers' compensation policy or an employee leasing policy. Additionally, she discovered that no active exemptions were associated with Respondent.

11. Based upon the information she gathered, Ms. King issued and served Mr. Vlasnik with a Stop-Work Order on March 23, 2015. Ms. King simultaneously issued and served "LONNIE VLASNIK, DBA, VLASNIK CARPENTRY & CONSTRUCTION, INC., a Dissolved Florida Corporation and VLASNIK CARPENTRY & CONSTRUCTION, INC.," with a Request for Production of Business Records for Penalty Assessment Calculation (the "Request for Production"). The Request for Production sought documents to enable the Department to determine Respondent's payroll for the time period of March 24, 2013, through March 23, 2015.

12. In response to the Request for Production, Mr. Vlasnik provided the Department with bank statements and other records.

13. Lawrence Pickle, a penalty auditor with the Department, was assigned in April 2015 to calculate the penalty to be assessed against Respondent.

14. Mr. Pickle believed the business records produced by Respondent were sufficient to calculate a penalty for the entire audit period.

15. Based upon Mr. Pickle's calculations, on June 19, 2015, the Department issued a second amended order of penalty

assessment to Respondent which was served on Respondent on June 22, 2015. The second amended order of penalty assessment imposed a penalty of \$8,240.60.

16. To make the penalty assessment determination, Mr. Pickle consulted the codes listed in the Scopes® Manual that has been adopted by the Department through Florida Administrative Code Rules 69L-6.021 and 69L-6.031. Classification codes are assigned to various occupations to assist in the calculation of workers' compensation insurance premiums.

17. Based upon Ms. King's description of the activities Mr. Vlasnik was performing and the descriptions listed in the Scopes® Manual, Mr. Pickle determined that the proper classification for employees of Respondent was 5645-Carpentry. Mr. Pickle then utilized the corresponding manual rates for those classification codes and the related periods of the alleged non-compliance.

18. Assuming the penalty should be imposed in this matter, Mr. Pickle utilized the appropriate methodology specified in section 440.107(7)(d)1. and rules 69L-6.027 and 69L-6.028, to determine the penalty of \$8,240.60.

19. Mr. Vlasnik and his wife, both directors of Respondent when it was an active corporation, are both disabled with Mrs. Vlasnik being unable to work at all. Mr. Vlasnik's disability is the result of an automobile accident in which he

suffered a neck injury in 2004 and for which he received significant surgeries and treatment after that time.

20. Mr. Vlasnik's physician, Roy Reyes, M.D., stated in a letter dated August 4, 2015, that Mr. Vlasnik is "unemployable" as a result of "medical conditions regarding cervical spine surgeries x2, Rt ulnar re-location, numbness and tingling upper extremities, involuntary muscle spasms and feet pain. Therefore patient is not able to work and keep a job." This diagnosis was confirmed by Mr. Vlasnik's MRI report dated June 28, 2011.

21. When the Stop-Work Order was issued on March 25, 2015, Mr. Vlasnik did not have an exemption as an employee of Respondent.

22. Mr. Vlasnik went to the Department's office on April 10, 2015, to pay \$1,000 towards the penalty assessment, but the Department would not lift the Stop-Work Order since he refused to enter into a payment agreement for the entire assessment. He also was told by Ms. King or, perhaps, by Ms. Sharon Kelson that he could not receive an exemption from the workers' compensation requirement until he set up an L.L.C., since he was required to be an employee of a Florida corporation before he could receive an exemption.

23. The business records supplied by Mr. Vlasnik in response to the Department's Request for Production consisted of three years' worth of bank statements. Most of the banking

transactions were through the ATM and were cash transactions without an explanation on the statements of the use of the cash withdrawn. A total of \$783.45 were payments made to Lowe's (14 transactions totaling \$385.05), Home Depot (10 transactions totaling \$336.81), Pensacola Hardware (three transactions totaling \$49.04), and Paint Mart (one transaction for \$12.55).

24. Mr. Vlasnik testified that, other than small payments made to Home Depot or Lowe's, along with account fees, all of his withdrawals from the account were for paying his and his wife's medical and household bills. The account was maintained in the name of Respondent even though the corporation had been dissolved years before the records produced in response to the Request for Production.

25. Mr. Vlasnik did not use the ATM withdrawals to pay Respondent's employees for work performed since the dissolved corporation had no employees.

26. Since the time of his accident in 2004 and the subsequent surgeries, Mr. Vlasnik testified that he was "working for scraps" by performing any odd jobs he could pick up to make ends meet. He performed tasks like taking alarm calls for companies, vacuuming houses, meeting real estate agents to help do an appraisal, or meeting termite inspectors to let them into a home to perform their work.



## CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2015).

28. Because administrative fines are penal in nature, the Department has the burden of proving by clear and convincing evidence that Respondent violated the Workers' Compensation Law during the relevant time period and that the penalty assessments are correct. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996).

29. The Department is the agency responsible for enforcement of chapter 440. As the responsible agency, the Department must abide by the statutes and rules that govern it.

30. Pursuant to sections 440.10, 440.107(2), and 440.38, every "employer" is required to secure the payment of workers' compensation for the benefit of its employees unless exempted or excluded under chapter 440. Strict compliance with the Workers' Compensation Law is required. See C&L Trucking v. Corbitt, 546 So. 2d 1185, 1186 (Fla. 5th DCA 1989).

31. Section 440.107(2) states that "'securing the payment of workers' compensation' means obtaining coverage that meets the requirements of this chapter and the Florida Insurance Code."

32. Pursuant to section 440.107(3)(g), "The department shall enforce workers' compensation coverage requirements" and "the

department shall have the power to . . . [i]ssue stop-work orders, penalty assessment orders, and any other orders necessary for the administration of this section."

33. Section 440.02(16)(a) defines "employer," in part, as "every person carrying on any employment." Further, "[i]f the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107."

34. The Workers' Compensation Law requires employers to secure the payment of compensation for their employees.

§§ 440.10(1)(a) and 440.38(1), Fla. Stat. (2006).

35. Section 440.107(7)(a) states, in relevant part:

Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter . . . such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours.

36. Pursuant to section 440.05(6), "[a] certificate of election to be exempt which is issued on or before January 1, 2013, in accordance with this section shall be valid for 2 years after the effective date stated thereon." Respondent, a dissolved corporation, did not have a certificate of exemption to cover Mr. Vlasnik, its director.

37. The Department is empowered to examine and copy the business records of any employer conducting business in Florida to determine whether it is in compliance with the Workers' Compensation Law. See § 440.107(3), Fla. Stat. Whenever the Department finds an employer who is required to have such coverage but fails to do so, such failure is deemed an immediate serious danger to the public health, safety, or welfare sufficient to justify service by the Department of a stop-work order on the employer requiring the cessation of all business operations. See § 440.107(1) and (7)(a), Fla. Stat.

38. Section 440.107(7)(d)1. provides that the Department:

[S]hall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year period or \$1,000, whichever is greater.

The method of penalty calculation described in section 440.107(7)(d) is mandatory.

39. Pursuant to Florida law, “[a] corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business affairs . . . and notify claimants.” § 607.1421, Fla. Stat.

40. Respondent, although administratively dissolved by the Division of Corporations for failure to file its 2009 annual report, exists for purposes of the proposed assessment in this matter. The issue that remains is whether the Department has proven by clear and convincing evidence the amount of payments made to Respondent’s employees to justify the imposition of a penalty assessment of \$8,240.60.

41. The clear and convincing standard of evidence has been described by the Florida Supreme Court as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

42. The link between the cash withdrawals shown in the bank records submitted by Respondent and relied upon by the Department as being payments made to Mr. Vlasnik as Respondent's employee is lacking. While the checking account is in Respondent's name, it appears to have been used by Mr. Vlasnik as his personal account, from which he regularly withdrew cash funds to pay for household and medical expenses for his wife and himself. The only transactions that can be shown as potentially related to the field of carpentry are those made to Lowe's and Home Depot. The total amount of these carpentry or home improvement-related transactions is \$783.45, hardly an amount that would support an active carpentry or handyman business.

43. The only carpentry activity observed by any of the Department's investigators was on March 23, 2015, when Ms. King saw Mr. Vlasnik replacing the decking material on the porch at a private home. None of the business records produced by Respondent support significant carpentry or even handyman work being performed by Mr. Vlasnik as Respondent's employee.

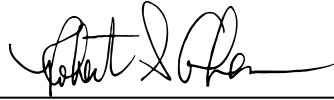
44. The extent of the evidence relied upon by the Department in assessing a penalty of \$8,240.60 against Respondent does not rise to the level of clear and convincing. It is evident that Mr. Vlasnik performed some work during the period of March 24, 2013, through March 23, 2015, and that some of it may have been carpentry-related. His testimony concerning his

disability and his inability to work at other than occasional and menial jobs given to him by others is credible and weakens the Department's case that he was engaged in carpentry work throughout the two-year period examined. Moreover, the fact that Mr. Vlasnik paid \$1,000, incorporated an L.L.C., and attempted to receive an exemption after the Stop-Work Order was imposed showed both his good faith and his desire to follow the law. The \$1,000 already received from Mr. Vlasnik by the Department is more than the total amount of material purchases he made at the various home improvement stores during the two-year period of the assessment and represents a fair assessment in this matter where the Department's entitlement to the full amount of the assessment (\$8,240.60) was not proven by clear and convincing evidence.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department issue a final order accepting the \$1,000 penalty already received from Respondent as payment in full for any assessment sought. Further, it is RECOMMENDED that the Department inform Mr. Vlasnik that he would be better served by closing the business account on the dissolved corporation and opening a new one in the name of the active L.L.C. should he desire to continue in some form of business.

DONE AND ENTERED this 7th day of December, 2015, in  
Tallahassee, Leon County, Florida.



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ROBERT S. COHEN  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 7th day of December, 2015.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.