STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF WORKERS' COMPENSATION,

Petitioner,

vs. Case No. 15-3653

GEORGE WASHINGTON BEATTY, III,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on November 3, 2015, and April 29, 2016, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ"), in Tallahassee, Florida.

APPEARANCES

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

For Respondent: George Washington Beatty, III, pro se
22701 Northwest Lake McKinzie Boulevard
Altha, Florida 32421

STATEMENT OF THE ISSUES

At issue in this proceeding is whether the Respondent, George Washington Beatty, III, failed to abide by the coverage requirements of the Workers' Compensation Law, chapter 440,

Florida Statutes, by not obtaining workers' compensation insurance for himself and/or his employees, and, if so, whether the Petitioner properly assessed a penalty against the Respondent pursuant to section 440.107, Florida Statutes.

PRELIMINARY STATEMENT

Pursuant to the Workers' Compensation Law, chapter 440, the Department of Financial Services, Division of Workers' Compensation ("Department"), seeks to enforce the statutory requirement that employers secure the payment of workers' compensation for their employees.

On September 8, 2014, the Department issued a "Stop-Work Order" alleging that Mr. Beatty failed to abide by the coverage requirements of the Workers' Compensation Law on that date. The order directed Mr. Beatty to cease business operations and pay a penalty equal to two times the amount he would have paid in premium to secure workers' compensation during periods within the preceding two years when he failed to do so, or $1,000, whichever is greater, pursuant to section 440.107(7)(d). The Department also requested business records from Mr. Beatty in order to determine the exact amount of the penalty.

Mr. Beatty did not provide business records to the Department. On October 16, 2014, the Department issued an "Amended Order of Penalty Assessment" that ordered Mr. Beatty to pay a penalty of $141,790.96, pursuant to section 440.107(7)(d).

Mr. Beatty disputed the Department's penalty calculation and requested an administrative hearing. On October 16, 2014, he filed a letter with the Department requesting a hearing. On June 24, 2015, the Department forwarded Mr. Beatty's request to the Division of Administrative Hearings ("DOAH"). (No explanation was provided as to why it took the Department nearly eight months to forward Mr. Beatty's request to DOAH.) The hearing was scheduled for September 3, 2015, but was continued at Respondent's request and rescheduled for November 3, 2015.

On August 25, 2015, the Department issued a "Second Amended Order of Penalty Assessment" based upon records submitted by Mr. Beatty. The Second Amended Order of Penalty Assessment reduced the penalty assessment to $58,363.88. Without objection, the undersigned ordered the hearing to go forward based on the Second Amended Order of Penalty Assessment.

The hearing was commenced as scheduled on November 3, 2015. At that hearing, it became apparent that Mr. Beatty had at his disposal (but not on hand) additional documentation that might further lower the amount of the penalty assessment. At the close of the hearing, the Department agreed to accept and review Mr. Beatty's documents and determine whether to further amend the penalty assessment. The hearing was recessed pending the Department's decision.

On December 21, 2015, the Department filed a Motion for Leave to Amend Order of Penalty Assessment. The Motion sought approval of a Third Amended Order of Penalty Assessment that would reduce the penalty to $9,356.52. Without objection, the undersigned entered an Order granting the Motion and directing that this case would go forward based on the Third Amended Order of Penalty Assessment.

After entry of the Order, the Department sought to contact Mr. Beatty in order to ascertain whether he was satisfied with the proposed penalty or whether he wished to pursue the case to its conclusion at a reconvened formal hearing. The Department was unable to contact Mr. Beatty. The undersigned entered an Order to Show Cause on March 14, 2016, directing Mr. Beatty to respond in writing as to his wishes regarding the case. On March 23, 2016, Mr. Beatty filed a written response indicating his desire to resume the hearing "to clear this matter up." The hearing was scheduled to resume on April 29, 2016, on which date it was completed.

At the hearing, the Department presented the testimony of its investigator, Carl Woodall, and of penalty audit manager, Anita Proano. The Department's Exhibits 1 through 9 and 12 were admitted into evidence. Mr. Beatty testified on his own behalf and presented the testimony of James W. Daffin. Mr. Beatty offered no exhibits into evidence.

The two-volume Transcript of the final hearing was filed at DOAH on May 26, 2016. The Department timely filed a Proposed Recommended Order on June 6, 2016. Mr. Beatty did not file a proposed recommended order.

Unless otherwise stated, all statutory references are to the 2014 edition of the Florida Statutes.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following Findings of Fact are made:

1. The Department is the state agency responsible for enforcing the requirement of the Workers' Compensation Law that employers secure the payment of workers' compensation coverage for their employees and corporate officers. § 440.107, Fla. Stat.

2. George Washington Beatty, III, is a sole proprietor who works as a painter and general construction handyman in the vicinity of Panama City. The types of work performed by Mr. Beatty are properly considered construction industry work.

3. Mr. Beatty's business is not incorporated. He has no regular employees other than himself. His Form 1099-MISC tax forms indicate that he was actively engaged in performing construction work during the two-year audit period from September 9, 2012, through September 8, 2014.

4. Carl Woodall is a Department compliance investigator based in Panama City. On September 8, 2014, Mr. Woodall drove up to 1803 New Hampshire Avenue in Lynn Haven, a vacant house where he saw a "for sale" sign and indications of work being performed on the house: the garage door was open and contained a great deal of painting materials such as drop cloths and paint buckets. A work van and a pickup truck were parked in the driveway.

5. Mr. Woodall testified that as he walked up to the front door, he could see someone inside on a ladder, painting the ceiling. As Mr. Woodall started to go in the front door, he was met by Mr. Beatty on his way out the door. Mr. Woodall introduced himself and gave Mr. Beatty his business card.

6. Mr. Woodall asked him the name of his business and Mr. Beatty stated that he did not know what Mr. Woodall was talking about. Mr. Beatty then told Mr. Woodall that he worked for Brush Stroke Painting but that he was not working this job for Brush Stroke. Mr. Beatty told Mr. Woodall that he was helping out a friend. Mr. Woodall asked whether Mr. Beatty had workers' compensation insurance coverage, and Mr. Beatty again stated that he did not know what Mr. Woodall was talking about. He was just there helping out his friend, the owner of the house.

7. Mr. Woodall asked Mr. Beatty to give him the owner's name and phone number. Mr. Beatty went out to his van to retrieve the information. While Mr. Beatty was out of the house, Mr. Woodall took the opportunity to speak with the three other men working in the house.

8. The first man, whom Mr. Woodall approached, was immediately hostile. He said that he was not working for anyone, that he was just helping someone out. He walked out of the house and never returned while Mr. Woodall was there.

9. Mr. Woodall walked into the kitchen and spoke to a man who was on a ladder, painting. The man identified himself as Dennis Deal and stated that he was working for Mr. Beatty for eight dollars an hour in cash. He told Mr. Woodall that he helped out sometimes when Mr. Beatty needed help. Before Mr. Woodall could speak to the third person, Mr. Beatty came back into the house with the owner's contact information.

10. Mr. Beatty continued to deny that he was paying anyone to work in the house. With Mr. Beatty present, Mr. Woodall spoke with the third man, Michael Leneave, who stated that Mr. Beatty was paying him ten dollars an hour in cash. Mr. Woodall then took Mr. Beatty over to Mr. Deal, who reiterated that Mr. Beatty was paying him eight dollars an hour.

11. Mr. Beatty responded that he could not believe the men were saying that because he had never told them a price.

Mr. Woodall asked Mr. Beatty to identify the man who left the house, and Mr. Beatty told him it was Tommy Mahone. Mr. Beatty stated that Mr. Mahone had a bad temper and probably left to get a beer.

12. After speaking with Mr. Beatty and the other men, Mr. Woodall phoned Brian Daffin (Mr. Daffin), the owner of the house. Mr. Woodall knew Mr. Daffin as the owner of an insurance company in Panama City. Mr. Daffin told Mr. Woodall that Mr. Beatty was painting his house, but was evasive as to other matters. Mr. Woodall stated that as the owner of an insurance company, Mr. Daffin was surely familiar with workers' compensation insurance requirements and that he needed a straight answer as to whether Mr. Daffin had hired Mr. Beatty to paint the house.

13. Mr. Daffin stated that he did not want to get Mr. Beatty in trouble, but finally conceded that he had hired Mr. Beatty to paint the house. Of the other three men, Mr. Daffin was familiar only with Mr. Mahone. He told Mr. Woodall that he had hired Mr. Beatty alone and did not know the details of Mr. Beatty's arrangements with the other three men.

14. At the hearing, Mr. Beatty testified that he was asked by Mr. Daffin to help him paint his house as a favor. Mr. Beatty had met Mr. Daffin through James Daffin, Mr. Daffin's

father and Mr. Beatty's friend. No one was ever paid for anything. Mr. Beatty stated that he took the lead in speaking to Mr. Woodall because he was the only one of the four men in the house who was sober. He told Mr. Woodall that he was in charge because Mr. Daffin had asked him to oversee the work.

15. None of the three men alleged to have been working for Mr. Beatty testified at the hearing. Mr. Daffin did not testify. Mr. Beatty's testimony is thus the only direct evidence of the working arrangement, if any, which obtained between Mr. Beatty and the three other men present at the house on September 8, 2014. The only evidence to the contrary was Mr. Woodall's hearsay testimony regarding his conversations with the three men and with Mr. Daffin.

16. Mr. Woodall checked the Department's Coverage and Compliance Automated System ("CCAS") database to determine whether Mr. Beatty had secured the payment of workers' compensation insurance coverage or had obtained an exemption from the requirements of chapter 440. CCAS is a database that Department investigators routinely consult during their investigations to check for compliance, exemptions, and other workers' compensation related items. CCAS revealed that Mr. Beatty had no exemption or workers' compensation insurance coverage for himself or any employees. There was no evidence that Mr. Beatty used an employee leasing service.

17. Based on his jobsite interviews with the alleged employees and Mr. Beatty, his telephone conversation with Mr. Daffin, and his CCAS computer search, Mr. Woodall concluded that as of September 8, 2014, Mr. Beatty had three employees working in the construction industry and that he had failed to procure workers' compensation coverage for himself and these employees in violation of chapter 440. Mr. Woodall consequently issued a Stop-Work Order that he personally served on Mr. Beatty on September 8, 2014.

18. Also on September 8, 2014, Mr. Woodall served Mr. Beatty with a Request for Production of Business Records for Penalty Assessment Calculation, asking for payroll and accounting records to enable the Department to determine Mr. Beatty's payroll and an appropriate penalty for the period from September 9, 2012, through September 8, 2014.

19. Mr. Beatty provided the Department with no documents in response to the Request for Production. On September 24, 2014, the Department issued an Amended Order of Penalty Assessment that assessed a total penalty of $141,790.96. The Amended Order of Penalty Assessment was served on Mr. Beatty via hand-delivery on October 16, 2014.

20. Anita Proano, penalty audit supervisor for the Department, later performed her own calculation of the penalty as a check on the work of the penalty calculator. Ms. Proano

testified as to the process of penalty calculation. Penalties for workers' compensation insurance violations are based on doubling the amount of evaded insurance premiums over the two-year period preceding the Stop-Work Order, which in this case was the period from September 9, 2012, through September 8, 2014. § 440.107(7)(d), Fla. Stat. Because Mr. Beatty initially provided no payroll records for himself or the three men alleged to have worked for him on September 8, 2014, the penalty calculator lacked sufficient business records to determine an actual gross payroll on that date.

21. Section 440.107(7)(e) provides that where an employer fails to provide business records sufficient to enable the Department to determine the employer's actual payroll for the penalty period, the Department will impute the weekly payroll at the statewide average weekly wage as defined in section 440.12(2), multiplied by two.[1/]

22. In the penalty assessment calculation, the Department consulted the classification codes and definitions set forth in the SCOPES of Basic Manual Classifications ("Scopes Manual") published by the National Council on Compensation Insurance ("NCCI"). The Scopes Manual has been adopted by reference in Florida Administrative Code Rule 69L-6.021. Classification codes are four-digit codes assigned to occupations by the NCCI to assist in the calculation of workers' compensation insurance

premiums. Rule 69L-6.028(3)(d) provides that "[t]he imputed weekly payroll for each employee . . . shall be assigned to the highest rated workers' compensation classification code for an employee based upon records or the investigator's physical observation of that employee's activities."

23. Ms. Proano testified that the penalty calculator correctly applied NCCI Class Code 5474, titled "Painting NOC & Shop Operations, Drivers," which is defined in part as "the general painting classification. It contemplates exterior and interior painting of residential or commercial structures that are constructed of wood, concrete, stone or a combination thereof regardless of height." The corresponding rule provision is rule 69L-6.021(2)(jj). The penalty calculator used the approved manual rates corresponding to Class Code 5474 for the periods of non-compliance to calculate the penalty.

24. Subsequent to issuance of the Amended Order of Penalty Assessment, Mr. Beatty submitted to the Department, IRS Wage and Income Transcripts for the tax years of 2011, 2012, and 2013, but not for tax year 2014. These Transcripts consisted of Form 1099-MISC forms completed by the business entities for which Mr. Beatty had performed work during the referenced tax years. The Department used the Transcripts to calculate the penalty for the 2012 and 2013 portions of the penalty period and imputed

Mr. Beatty's gross payroll for the 2014 portion pursuant to the procedures required by section 440.107(7)(e) and rule 69L-6.028.

25. On August 25, 2015, the Department issued a Second Amended Order of Penalty Assessment in the amount of $58,363.88, based on the mixture of actual payroll information and imputation referenced above.

26. At the final hearing convened on November 3, 2015, Mr. Beatty stated that he now had the Wage and Income Transcript for tax year 2014 and would provide it to the Department. At the close of hearing, the undersigned suggested, and the Department agreed, that the proceeding should be stayed to give the Department an opportunity to review the new records and recalculate the proposed penalty assessment.

27. On December 21, 2015, the Department issued a Third Amended Order of Penalty Assessment in the amount of $9,356.52. Ms. Proano herself calculated this penalty. The Third Amended Order assessed a total penalty of $9,199.98 for work performed by Mr. Beatty during the penalty period, based on the Wage and Income Transcripts that Mr. Beatty submitted.

28. The Third Amended Order assessed a total penalty of $156.54 for work performed by Messrs. Mahone, Deal, and Leneave on September 8, 2014. This penalty was imputed and limited to the single day on which Mr. Woodall observed the men working at the house in Lynn Haven. Mr. Beatty's records indicated no

payments to any employee, during the penalty period or otherwise.

29. The evidence produced at the hearing established that Ms. Proano utilized the correct class codes, average weekly wages, and manual rates in her calculation of the Third Amended Order of Penalty Assessment.

30. The Department has demonstrated by clear and convincing evidence that Mr. Beatty was in violation of the workers' compensation coverage requirements of chapter 440. The Department has also demonstrated by clear and convincing evidence that the penalty was correctly calculated through the use of the approved manual rates, business records provided by Mr. Beatty, and the penalty calculation worksheet adopted by the Department in rule 69L-6.027.

31. However, the Department did not demonstrate by clear and convincing evidence that Tommy Mahone, Dennis Deal, and Michael Leneave were employees of Mr. Beatty on September 8, 2014. There is direct evidence that Mr. Woodall saw the men working in the house, but the only evidence as to whether or how they were being paid are the hearsay statements of the three men as relayed by Mr. Woodall. The men were not available for cross-examination; their purported statements to Mr. Woodall could not be tested in an adversarial fashion. Mr. Beatty's testimony that the men were not working for him and that he was

merely supervising their work as a favor to Mr. Daffin is the only sworn, admissible evidence before this tribunal on that point. Mr. Beatty was adamant in maintaining that he did not hire the men, and his testimony raises sufficient ambiguity in the mind of the factfinder to preclude a finding that Messrs. Mahone, Deal, and Leneave were his employees.

32. Mr. Beatty could point to no exemption or insurance policy that would operate to lessen or extinguish the assessed penalty as to his own work.

33. The Department has demonstrated by clear and convincing evidence that Respondent was engaged in the construction industry in Florida during the period of September 9, 2012, through September 8, 2014, and that Respondent failed to carry workers' compensation insurance for himself as required by Florida's Workers' Compensation Law from September 9, 2012, through September 8, 2014.

34. The penalty proposed by the Third Amended Order of Penalty Assessment should be reduced to $9,199.98, the amount sought to be imposed on Mr. Beatty himself.

CONCLUSIONS OF LAW

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

36. Employers are required to secure payment of compensation for their employees. §§ 440.10(1)(a) and 440.38(1), Fla. Stat.

37. "Employer" is defined, in part, as "every person carrying on any employment." § 440.02(16)(a), Fla. Stat. "Employment . . . means any service performed by an employee for the person employing him or her" and includes "with respect to the construction industry, all private employment in which one or more employees are employed by the same employer." §§ 440.02(17)(a) and (b)2, Fla. Stat.

38. "Employee" is defined, in part, as "any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written." § 440.02(15)(a), Fla. Stat.

39. The Department has the burden of proof in this case and must show by clear and convincing evidence that the employer violated the Workers' Compensation Law and that the penalty assessments were correct under the law. See Dep't of Banking and Fin., Div. of Sec. and Investor Prot. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

40. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n.5 (Fla. 1st DCA 1989), the Court defined clear and convincing evidence 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 evidence 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 the firm belief of conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

41. Judge Sharp, in her dissenting opinion in Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652, 655 (Fla. 5th DCA 1998)(Sharp, J., dissenting), reviewed recent pronouncements on clear and convincing evidence:

> Clear and convincing evidence requires more proof than preponderance of evidence, but less than beyond a reasonable doubt. In re Inquiry Concerning a Judge re Graziano, 696 So. 2d 744 (Fla. 1997). It is an intermediate level of proof that entails both qualitative and quantative [sic] elements. In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995), cert. denied, 516 U.S. 1051, 116 S. Ct. 719, 133 L.Ed.2d 672 (1996). The sum total of evidence must be sufficient to convince the trier of fact without any hesitancy. Id. It must produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. Inquiry Concerning Davey, 645 So. 2d 398, 404 (Fla. 1994).

42. The undersigned has found that the Department did not prove by clear and convincing evidence that Mr. Beatty employed Tommy Mahone, Dennis Deal, and Michael Leneave on September 8, 2014. The Department did prove that Mr. Beatty was a sole proprietor working in the construction industry. Therefore, Mr. Beatty was his own employer and was required to obtain workers' compensation insurance coverage for himself.

43. In Department of Financial Services, Division of Workers' Compensation v. Alfred Strange, Case No. 13-1212 (DOAH August 22, 2013), ALJ F. Scott Boyd provided an illuminating historical explanation of the workers' compensation insurance requirements for sole proprietors, which is applicable to and followed by the instant case:

> 38. The statutory definition of employer is not straightforward. Section 440.02(16)(a) defines "employer" to include "every person carrying on any employment."
>
> 39. Section 440.02(17) then defines "employment" in a somewhat circular fashion as "any service performed by an employee for the person employing him or her." The definition excludes certain types of labor and services not applicable here, and includes, "with respect to the construction industry, all private employment in which one or more employees are employed by the same employer."
>
> 40. Historically . . . it was held that a sole proprietor could not be his own employee because there was no legal entity apart from the individual which could be considered to

be the individual's employer. Stevens v. Int'l Builders of Fla., 207 So. 2d 287, 290 (Fla. 3d DCA 1968)(sole proprietor could not be a "statutory employee" of himself under the workers' compensation law because it is a logical anomaly to conceive of an individual as an entity apart from itself).

41. Particularly with respect to the relatively dangerous construction industry, statutory changes were subsequently enacted to effect expansion of workers' compensation coverage. First, a sole proprietor was permitted to "opt in" by becoming an "employee" of his own business. § 440.02(2)(c), Fla. Stat. (1981); Boyd-Scarp Enters. v. Saunders, 453 So. 2d 161, 163 (Fla. 1st DCA 1984)(sole proprietor who failed to affirmatively elect to be an employee of his own business could not be considered a "statutory employee" of the general contractor either).

42. The statute was next changed to create an "opt out" structure. That is, a sole proprietor in the construction industry was considered to be an employee for purposes of workers' compensation unless the sole proprietor affirmatively elected to be excluded from the definition of employee by filing written notice of such election with the Division of Workers' Compensation. § 440.02(13)(c), Fla. Stat. (1995); Armstrong v. Ormond in the Pines, 734 So. 2d 596, 597-598 (Fla. 1st DCA 1999)(without evidence of election to be exempt, sole proprietor was an employee of the general contractor).

43. In 2004, the statute was amended again. Section 440.02(15)(c) now defines "employee" to include:

> 1. A sole proprietor or a partner who is not engaged in the construction industry, devotes full time to the proprietorship or partnership, and elects to be

> included in the definition of employee by filing notice thereof as provided in s. 440.05.
>
> 2. All persons who are being paid by a construction contractor as a subcontractor, unless the subcontractor has validly elected an exemption as permitted by this chapter, or has otherwise secured the payment of compensation coverage as a subcontractor, consistent with s. 440.10, for work performed by or as a subcontractor.
>
> 3. An independent contractor working or performing services in the construction industry.
>
> 4. A sole proprietor who engages in the construction industry and a partner or partnership that is engaged in the construction industry.
>
> This definition does away with all elections for sole proprietors engaged in construction, and simply declares as a matter of law that they are employees. Although not obvious from the text alone, which does not refer to "employers" at all and confusingly blends forms of legal organization with types of business relationships, the court cases and legislative history summarized above make it clear that this language also makes a sole proprietor who engages in the construction industry his own "employer."

44. Section 440.02(8) defines "construction industry" as "for-profit activities involving any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land." Section 440.02(8) further provides "[t]he division may, by rule, establish standard

industrial classification codes and definitions thereof which meet the criteria of the term 'construction industry' as set forth in this section." Mr. Beatty's activities as a painter and handyman constituted construction under the Department's statutorily authorized rules. Fla. Admin. Code R. 69L-6.021(2)(jj).

45. The Department established by clear and convincing evidence that Mr. Beatty was his own employer for workers' compensation purposes because he was engaged as a sole proprietor in the construction industry during the period of November 19, 2012, through November 18, 2014. §§ 440.02(15)(c)4., (16)(a) and (17)(b)2., Fla. Stat.

46. Section 440.107(7)(a) provides 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.

Thus, the Department's Stop-Work Order was mandated by statute.

47. As to the computation and assessment of penalties, section 440.107(7) provides, in relevant part:

> (d)1. In addition to any penalty, stop-work order, or injunction, the department shall 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 . . . .

48. Ms. Proano properly utilized the penalty worksheet mandated by rule 69L-6.027 and the procedure set forth in section 440.107(7)(d)1. to calculate the penalty owed by Mr. Beatty as a result of his failure to comply with the coverage requirements of chapter 440, with the exception of the $156.54 imputed to Messrs. Mahone, Deal, and Leneave.

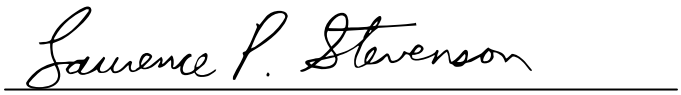
49. The Department has proven by clear and convincing evidence that Mr. Beatty is subject to a penalty of $9,199.98, which is the penalty calculated in the Third Amended Order of Penalty Assessment minus the portion of the penalty imputed to Messrs. Mahone, Deal, and Leneave.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Financial Services, Division of Workers' Compensation, assessing a penalty of $9,199.98 against George Washington Beatty, III.

DONE AND ENTERED this 6th day of July, 2016, in Tallahassee, Leon County, Florida.



LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of July, 2016.

ENDNOTE

[1/] Section 440.12(2) defines "statewide average weekly wage" as "the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the Department of Economic Opportunity on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following." The Department entered into evidence a letter dated November 18, 2013, signed by Tom Clendenning, workforce services director of the Department of Economic Opportunity, stating that the average weekly wage paid by Florida employers subject to the Florida Reemployment Assistance Program Law was $827.08, based upon the four calendar quarters ending June 30, 2013. This was the

figure used by the Department to calculate the imputed wages in this case.

COPIES FURNISHED:

George Washington Beatty, III
22701 Northwest Lake McKinzie Boulevard
Altha, Florida 32421

Trevor S. Suter, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4229
(eServed)

Joaquin Alvarez, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4229
(eServed)

Julie Jones, CP, FRP, Agency Clerk
Division of Legal Services
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0390
(eServed)

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.