

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF WORKERS'
COMPENSATION,

Petitioner,

Case No. 15-5320

vs.

BERT HALAS, IV,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on November 12, 2015, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Alexander Brick, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399

For Respondent: Bert L. Halas, IV, pro se
13480 Northwest 5th Street
Plantation, Florida 33325

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent is a corporate officer of a company that remains delinquent in paying a penalty assessed by Petitioner, an affiliation which would

render Respondent ineligible to make an effective election of exemption from chapter 440, Florida Statutes; and, if so, whether Petitioner should deny Respondent's Notice of Election to Be Exempt for that reason.

PRELIMINARY STATEMENT

On August 21, 2015, Respondent Bert Halas, IV, filed a Notice of Election to Be Exempt with Petitioner Department of Financial Services, Division of Workers' Compensation, applying for a certification of exemption from the insurance coverage requirements and benefits of the Workers' Compensation Law. By a letter dated September 4, 2015, the Department notified Mr. Halas that it intended to deny his election to be exempt, citing Mr. Halas's affiliation as a corporate officer of JMD Superior Services, Corp., a firm which is delinquent in paying a stop-work order and penalty assessment order.

Mr. Halas timely requested a formal administrative hearing. On September 23, 2015, the Department referred the matter to the Division of Administrative Hearings, where the case was assigned to an Administrative Law Judge.

The final hearing took place as scheduled on November 12, 2015, with both parties present. The Department called as a witness Kevin Sterling, who at the time of the hearing was an Operations and Management Consultant in the Exemption Unit of the Bureau of Compliance. The Department's Exhibits 1 through 5

were received in evidence as well. Mr. Halas testified on his own behalf and offered no exhibits.

The final hearing transcript was filed on December 7, 2015. The Department submitted a Proposed Recommended Order on December 17, 2015, in accordance with the schedule established at the conclusion of the hearing.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2015.

FINDINGS OF FACT

1. Petitioner Department of Financial Services, Division of Workers' Compensation (the "Department"), is the state agency responsible, among other things, for (i) reviewing corporate officers' applications for exemption from the requirements and benefits of the Workers' Compensation Law and (ii) issuing certifications of the election to those applicants who meet the statutory criteria therefor and are not found ineligible to make such election.

2. Respondent Bert Halas, IV ("Halas"), is the owner and president of Halas Construction, Inc. As an officer of a corporation engaging in the construction industry who elects an exemption from chapter 440, Halas previously has obtained certificates of exemption, the most recent of which had an effective date of July 30, 2013, and was valid for two years as

provided by statute. On or around August 21, 2015, Halas submitted an application called a Notice of Election to Be Exempt—to renew his exemption.

3. By letter dated September 4, 2015, the Department notified Halas that it intended to deny the exemption based on a determination that, at all relevant times, Halas was a corporate officer of, and thus affiliated with, JMD Superior Services, Corp. ("JMD"), an entity which is delinquent in paying a stop-work order and penalty assessment order. Being affiliated with a person who is delinquent in paying a penalty assessment makes one ineligible for an election of exemption, and JMD was, in fact, delinquent as of the date of the final hearing in this matter. Therefore, Halas would be ineligible for an exemption if, as the Department alleges, he were a corporate officer of JMD.

4. It is undisputed that, in documents filed with the Department of State ("DOS") between May 2011 and August 2015, Halas is identified as an officer or director of JMD. Each such document bears the signature of Cesar Castaneda, JMD's president. None, however, contains Halas's signature, and there is no evidence in the record of Halas's having acted or held himself out as a corporate officer or director.

5. Halas testified credibly at hearing, and the undersigned finds, that he neither knew about nor consented to

Mr. Castaneda's naming him (Halas) as a corporate officer of JMD, and that he had not agreed to serve in that capacity. The undersigned credits Halas's testimony that he never knowingly and voluntarily filled or performed the position of officer or director of JMD and so finds.

6. Accordingly, it is determined as a matter of ultimate fact that Halas is not an "affiliated person" of JMD as that term is defined in section 440.05(15), which means that Halas is not, in fact, ineligible for an election of exemption, as the Department mistakenly believed.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

8. As the applicant for certification of an election to be exempt from the provisions of chapter 440,^{1/} Halas has the ultimate burden of persuasion and must prove, by a preponderance of the evidence, that he meets all applicable statutory requirements. § 120.57(1)(j), Fla. Stat.; see Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

9. The Department has burdens, too. Section 120.60(3) provides as follows:

(3) Each applicant shall be given written notice, personally or by mail, that the agency intends to grant or deny, or has

granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision

(Emphasis added). Thus, it is "the Department's burden to provide specific reasons for the denial and to produce competent, substantial evidence to support those reasons." N.W. v. Dep't of Child. & Fam. Servs., 981 So. 2d 599, 601 (Fla. 3d DCA 2008).

10. There is no question that if, as the Department alleges, Halas were an officer or director of JMD, then Halas would be ineligible for an election of exemption. See § 440.05(15)(f), Fla. Stat. The Department, however, offered no persuasive evidence to rebut Halas's credible testimony that he was never a corporate officer of JMD.

11. The only evidence that the Department presented on this dispositive issue of material fact consists of certified copies of documents in JMD's file with DOS. This evidence conclusively proves that the originals of these documents are on file with DOS. See § 607.0127, Fla. Stat.

12. What the Department's evidence is *not* competent to prove, however, is the truth of the matters asserted in the

documents. This is because documents on file with DOS are merely hearsay if offered, as here, to prove that the information contained in them is correct. In this regard, section 607.0125, Florida Statutes, provides as follows:

(4) The Department of State's duty to file documents under this section is ministerial. The filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document;

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

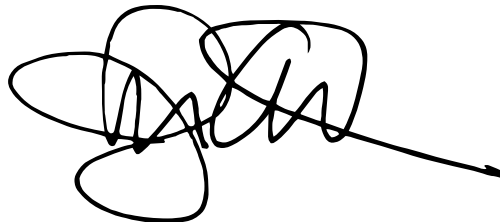
13. The Department did not establish a basis for receiving the file of JMD under an exception to the hearsay rule. Nor do the documents in JMD's file supplement or explain other evidence. See § 120.57(1)(c), Fla. Stat. Therefore, although the DOS-filed records were admissible pursuant to section 607.0127, they are not persuasive, or even competent, proof that Halas was a corporate officer of JMD. Halas's testimony, in contrast, was persuasive, substantial, and competent evidence sufficient to establish that, more likely than not, he never was a corporate officer of JMD.

14. Halas meets the requirements for an exemption from chapter 440, contrary to the particular reasons for denial of certification set forth in the Department's notice of intended action dated September 4, 2015.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services, Division of Workers' Compensation, (i) enter a final order approving Halas's Notice of Election to Be Exempt and (ii) issue a certification of the election to Halas.

DONE AND ENTERED this 22nd day of December, 2015, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 2015.

ENDNOTE

^{1/} The certification of the election of exemption which Halas seeks in this proceeding is a license under section 120.52(10).

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.